

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

HEARING ROOM A
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 7, 2001

10:00 A.M.

Reported By:
Valorie Phillips
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William J. Keese, Chairman

Michal C. Moore

Robert A. Laurie

Robert Pernell

Arthur Rosenfeld

James D. Boyd, Ex Officio Member

STAFF PRESENT

Steve Larson, Executive Director

Bill Chamberlain, Chief Counsel

Caryn Holmes

Jonathan Blees

Don Kondoleon

John Sugar

Michael Messenger

Roger Johnson

Michael Martin

Valerie Hall

James Reede

Public Adviser

Roberta Mendonca

Maria Krapceovich

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1 P R O C E E D I N G S

2 CHAIRMAN KEESE: I call this meeting of
3 the California Energy Commission to order.

4 Mr. Rosenfeld, would you lead us in the
5 Pledge, please.

6 (Thereupon the Pledge of Allegiance
7 was recited in unison.)

8 CHAIRMAN KEESE: Good morning. It's a
9 pleasure to be here.

10 Consent Calendar. Do I have a motion?

11 COMMISSIONER MOORE: Move consent.

12 CHAIRMAN KEESE: Motion, Commissioner
13 Moore

14 COMMISSIONER ROSENFELD: Second.

15 CHAIRMAN KEESE: Second, Commissioner
16 Rosenfeld.

17 All in favor?

18 (Ayes.)

19 CHAIRMAN KEESE: Opposed?

20 Five to nothing.

21 Item 2. U.S. Dataport Jurisdictional
22 Determination. At the mutual request of the
23 parties, this issue is over until -- put over.

24 (Laughter.)

25 COMMISSIONER MOORE: Oh, what a relief.

1 CHAIRMAN KEESE: Is there -- is there --
2 we're not going to hear from Staff, we're not
3 going to hear from U.S. Dataport.

4 Is there anybody in the audience who had
5 intended to speak to this issue?

6 Thank you.

7 CHIEF COUNSEL CHAMBERLAIN: Mr.
8 Chairman, I think it --

9 CHAIRMAN KEESE: Mr. Chamberlain.

10 CHIEF COUNSEL CHAMBERLAIN: -- it would
11 be worthwhile to put on the record that the reason
12 that the matter was put over was because although
13 we sent out the proposed decision last Thursday,
14 apparently it did not reach the counsel for the
15 Applicant until yesterday afternoon, late
16 yesterday afternoon, and so he requested that the
17 matter be put over.

18 CHAIRMAN KEESE: Thank you, Mr.
19 Chamberlain.

20 COMMISSIONER LAURIE: Do you have a
21 specific date? Is this just continued to the next
22 meeting, or is it off calendar?

23 CHIEF COUNSEL CHAMBERLAIN: It's to the
24 next meeting.

25 CHAIRMAN KEESE: Thank you. And that

1 will be the 21st, I believe.

2 Item 3. The Valley Group, Inc.
3 Possible approval of a sole source Contract 700-
4 00-006, for \$369,204 to demonstrate the
5 feasibility of implementing real time transmission
6 line ratings for Path 15, et cetera.

7 MR. KONDOLEON: Good morning,
8 Commissioners. This contract is to demonstrate
9 the feasibility of implementing real time ratings
10 for Path 15. It's a project that's funded through
11 the PIER Strategic Research program. We will be
12 demonstrating, again, real time ratings for Path
13 15 as opposed to the current static ratings that
14 are utilized by the utilities. We'll be using
15 data from existing monitors from PG&E's system to
16 provide information to the ISO dispatchers.

17 We are scheduled to have the project up
18 and running by June of this year, so we will be
19 able to have that information available through
20 the summer peak season.

21 CHAIRMAN KEESE: Mr. Kondoleon, when do
22 we think we will have preliminary -- I see the
23 project's going to run through June of 2003. When
24 will we have preliminary feedback from your
25 activities?

1 MR. KONDOLEON: We'll have it almost
2 immediately. I would say, as I said, we're --
3 we're optimistic about having the information
4 available to the ISO in June, and they will have
5 access to that information immediately. We will
6 be doing an ongoing assessment of the information
7 that's collected vis-a-vis the real time ratings
8 versus what would typically be utilized under
9 static basis. And that's where we'll be doing the
10 analysis for about a -- over a one-year period.

11 What's also interesting is the fact that
12 we're going to look at other paths within
13 California that would benefit from -- from this
14 approach, and that would be possibly a follow on
15 PIER activity to look at implementation of -- of
16 this technology to other paths in California.

17 CHAIRMAN KEESE: Thank you.

18 Mr. Boyd.

19 EX OFFICIO MEMBER BOYD: Mr. Chairman,
20 thank you.

21 Mr. Kondoleon, you and I have been
22 locked up in various conference rooms, along with
23 Mr. Larson, for 12, 13 consecutive days,
24 discussing various energy issues, and definitely
25 transmission and definitely Path 15.

1 I was surprised, when I finally got
2 around to reading this last night, to stumble on
3 this item and to -- and I was a little surprised
4 we hadn't talked about its relevance to our
5 current discussions. So after this meeting I'd
6 like to understand this a little more, and wonder
7 if it isn't relevant -- well, it's certainly
8 relevant and related, but does it belong on the
9 table in all those discussions we're having
10 relative to Path 15 solutions that may affect
11 things this week, as a matter of fact.

12 MR. KONDOLEON: Well, one of the things
13 I was cautious about is the fact that, again, this
14 is a demonstration project, and I don't want to
15 oversell its value, but, again, this is a research
16 activity. I think it's going to provide us with
17 beneficial information and maybe such tied with
18 some other actions that you and I have talked
19 about here in the last couple of days with regard
20 to changing of procedures, or at least approaching
21 the WSCC with regard to potential changes in
22 procedures for this summer may provide us with
23 supporting information that would make those
24 people more comfortable.

25 But, again, relative to looking at a

1 potential expansion project, again, this is just a
2 demonstration, but it has the potential for
3 realizing real time benefits on the order of 15 to
4 20 percent gain in capacity.

5 EX OFFICIO MEMBER BOYD: Appreciate
6 that. Should you be given a chance to talk about
7 this issue in more detail, as we've noted has been
8 a problem, I think we should put this on the table
9 as something that's in process.

10 MR. KONDOLEON: Yeah. Absolutely.

11 CHAIRMAN KEESE: Thank you. Any other
12 questions?

13 Do I have a motion?

14 COMMISSIONER MOORE: Move for approval.

15 COMMISSIONER ROSENFELD: Second.

16 CHAIRMAN KEESE: Motion, Commissioner
17 Moore. Second, Commissioner Rosenfeld.

18 All in favor?

19 (Ayes.)

20 CHAIRMAN KEESE: Opposed?

21 Adopted, five to nothing. Thank you.

22 At this point we will move to Item 12,
23 which should precede Items 4 and 5 in the agenda.
24 And we'll take 4 and 5 together, but we will first
25 take Item 12.

1 Item 12, Peak Load Reduction Program.
2 Recommended change i Peak Load Reduction Program
3 Overall and HVAC Guidelines to remove the
4 prohibition on investor-owned utilities serving as
5 a prime contractor to the Commission, and to
6 remove PUC approval for investor-owned utility
7 prime contractors.

8 Mr. Sugar.

9 MR. SUGAR: Thank you, Mr. Chairman.

10 My name is John Sugar. I'm with
11 Commission Staff.

12 In October when the Commission initially
13 adopted the AB 970 grant program guidelines,
14 Public Utilities Commission representatives and
15 the Energy Commission agreed to exclude the
16 investor-owned utilities from directly receiving
17 grants or being prime contractors in the program.
18 This policy was designed to address concerns
19 regarding possible program cross subsidies and
20 program accounting.

21 Since that time, we've identified at
22 least one opportunity in the demand response of
23 HVAC and lighting program to take advantage of the
24 utility expertise as a prime contractor in that
25 program.

1 There have been discussions between
2 Commissioner Rosenfeld and PUC President Lynch
3 regarding eliminating the restrictions on the
4 investor-owned utility participation in the
5 program. They've agreed that utility
6 participation would be beneficial, and that the
7 restriction is no longer necessary.

8 This does not remove the restriction on
9 not mixing utility and Energy Commission funds.
10 It simply removes the restriction that utilities
11 be prime contractors or grantees.

12 As a result of the discussions between
13 those commissioners, Staff is requesting the
14 Commission to approve modifying the AB 970 peak
15 demand grant program guidelines to remove language
16 excluding investor-owned utilities from
17 participating as grantees or prime contractors.

18 COMMISSIONER PERNELL: Mr. Chairman, I
19 would move Staff recommendation.

20 COMMISSIONER ROSENFELD: Second.

21 CHAIRMAN KEESE: Motion by Commissioner
22 Pernell, second by Commissioner Rosenfeld.

23 Further discussion. Any public comment
24 on this issue?

25 Hearing none, all in favor?

1 (Ayes.)

2 CHAIRMAN KEESE: Opposed?

3 Adopted, five to nothing.

4 MR. SUGAR: Thank you.

5 CHAIRMAN KEESE: Thank you.

6 We'll then return to Items 4 and 5,
7 which we will take up together.

8 Item 4, AB 970 Demand Responsiveness
9 Program. Possible approval of seven contracts to
10 recruit commercial customers, perform site surveys
11 and install real time meters, two-way
12 communication, et cetera.

13 I will read these for the record,
14 because the numbers have changed. So I'm going to
15 -- I will read in the correct figures.

16 Item A, Pacific Gas and Electric, the
17 number is \$1,552,129.

18 Item B, Sieben Energy Associates, the
19 number is \$340,645.

20 Item C, San Diego Regional Energy
21 Office, the number is \$1,166,566.

22 Item D, Roseville Electric, the number
23 is \$1,051,600.

24 Item E, Apogee Interactive, the number
25 is \$510,915.

1 Item F, Enron Energy Services, the
2 number is \$1,650,000.

3 And Item G is correct.

4 On Item 5, I will read. AB 970 Demand
5 Responsiveness Program. Possible approval of
6 three grants to install hardware, two-way
7 communication -- I'm sorry.

8 Possible approval of two grants to
9 install hardware, two-way communication devices
10 and demand responsiveness software that will be
11 provide approximately -- change the number to 2.4
12 megawatts. We are taking up Items A and C. Item
13 D has been withdrawn at this time.

14 COMMISSIONER PERNELL: Mr. Chairman.

15 CHAIRMAN KEESE: Commissioner Pernell.

16 COMMISSIONER PERNELL: Mr. Chairman,
17 thank you for taking up the two items together.

18 It gives me great pleasure to bring
19 before you seven contracts and two grants, and
20 this is the -- one of the last elements of AB 970,
21 Peak Load Reduction Program.

22 These contracts will achieve a minimum
23 of 70 megawatts in demand reduction this summer.
24 The Efficiency Committee wants to commend Staff
25 for the 70 megawatts reduction in the three

1 months, and the goal was 50 megawatts, so we
2 really want to appreciate Staff in going out,
3 being aggressive, and seeking these contracts.

4 And with that, I will have Mr. Messenger
5 answer any questions and explain any -- any of the
6 contracts that the Commission has questions on.

7 MR. MESSENGER: Thank you. I just want
8 to point out two novel pieces of this contract,
9 which I think the Commission should consider for
10 future contracting.

11 One is we are paying for performance.
12 We have put a significant portion of this contract
13 up for risk, 40 percent. If they don't deliver
14 the megawatts that they claim that they're going
15 to be signing up and installing, we are not
16 obligated to pay them that 40 percent.

17 That's the reason, by the way, that
18 these numbers changed, is that we had originally
19 not included the upside potential; we just put the
20 contract amount in. And the upside potential is
21 if they achieve more than 20 percent of the
22 megawatts that they have contracted for, we will
23 give them a ten percent superior performance
24 payment. So that's the reason why these numbers
25 changed at the last minute there for you.

1 The other thing I want to say is that we
2 have -- people are beating down the program doors
3 with more applications, and we're hoping that
4 through the legislation that's currently being
5 considered in the legislature, we will get an
6 additional 50 to \$70 million for this program,
7 because we have at least that number of people
8 coming in and asking to sign up megawatts.

9 Thank you.

10 CHAIRMAN KEESE: Thank you.

11 EX OFFICIO MEMBER BOYD: Mr. Chairman.

12 CHAIRMAN KEESE: Mr. Boyd.

13 EX OFFICIO MEMBER BOYD: Thank you.

14 Mr. Messenger, I noted a reasonably
15 consistent correlation between all these projects,
16 with one exception, on the cost per megawatt. If
17 you just look at the amount of megawatts and the
18 money we're spending, then it seemed to follow.
19 But Item C, I -- I must confess, is -- stretches
20 that some. And, of course, this is San Diego and
21 nothing electric is cheap in San Diego anymore,
22 unfortunately. But I was a little curious about
23 spending that much money for three megawatts,
24 versus a better cost effectiveness ratio in the
25 other areas. And --

1 MR. MESSENGER: Well --

2 EX OFFICIO MEMBER BOYD: Excuse me. Go
3 ahead.

4 MR. MESSENGER: I'm sorry. There's a --
5 there's a good reason for that. San Diego, their
6 proposal was innovative in that they're proposing
7 to go after smaller and medium size customers,
8 because, first of all, in San Diego they don't
9 have that many large customers, with the exception
10 of the Navy. And so they said look, we believe
11 that the large customers are going to be targeted
12 by, for example, PG&E and in northern California
13 where the larger industries are, so they get a --
14 it's easier for them to go in, because the time of
15 use meters are already there. In San Diego, the
16 time of use meters, in most cases, have to be
17 installed.

18 So that's what's adding the additional
19 cost in terms of the dollars per megawatt. And it
20 is underneath our program guideline of 250. So
21 we're hoping that we learn from the San Diego
22 experience about how to reach smaller and medium
23 size customers, rather than solely focusing on the
24 large customers who already have time of use
25 meters and can bring it in at \$50 a kilowatt, for

1 example.

2 The other difference is, of course, San
3 Diego has milder weather, and so that has some
4 difference in terms of the megawatts you can get
5 when you reduce -- when you lift the temperature
6 float four degrees up on a afternoon day.

7 EX OFFICIO MEMBER BOYD: Thank you. I'm
8 glad I asked, that's a good answer. And I am
9 intrigued with the fact that you're moving into
10 the lighter and medium arena with the time of use
11 meters, et cetera, et cetera, so I look forward to
12 feedback you get from this.

13 CHAIRMAN KEESE: Any other questions
14 from the Committee?

15 Do we have a motion?

16 COMMISSIONER ROSENFELD: So move.

17 CHAIRMAN KEESE: Motion, Commissioner
18 Rosenfeld.

19 COMMISSIONER PERNELL: Second.

20 CHAIRMAN KEESE: Second, Commissioner
21 Pernell.

22 Any public comment?

23 Hearing none, all in favor?

24 (Aye.)

25 CHAIRMAN KEESE: Opposed?

1 Adopted, five to nothing.

2 Thank you.

3 Item 6. Huntington Beach Generating
4 Station Retool Project. Possible approval of the
5 Executive Director's data adequacy recommendation
6 for the Huntington Beach Generating Station Retool
7 Project Application for Certification.

8 MR. JOHNSON: Good morning,
9 Commissioners. I'm Roger Johnson, the Siting
10 Office Manager.

11 On December 1st, AES filed their
12 Application for Certification for the Huntington
13 Beach Generating Station Retool Project. On
14 January 10th, the Commission adopted Staff's
15 recommendation that the application be found
16 inadequate for lack of information.

17 AES has provided supplements to the AFC
18 --

19 CHAIRMAN KEESE: You have to get real
20 close to that mic if you can, please. Thank you.

21 MR. JOHNSON: Sorry.

22 AES has provided supplements to the AFC
23 on January 19th and February 5th. Staff has
24 reviewed those supplements, and Staff is
25 recommending today that the Commission use its

1 discretion to begin review of the AFC even though
2 there are still minor needs in the areas of Air
3 Quality, Visual Resources and Water Supply.

4 Further, AES has requested the
5 Commission consider the application under its
6 emergency six-month regulations. However, the
7 application doesn't meet two significant
8 requirements; one, AES has not identified that
9 they have control of all the offsets that are
10 required, and they do not have a will serve letter
11 for the water that's required for the project.

12 However, given the current situation in
13 California with our energy supply, Staff
14 recommends that the Committee -- that the
15 Committee assigned to the project direct the Staff
16 to work with the Applicant to expedite the review
17 of this AFC.

18 CHAIRMAN KEESE: Thank you.

19 COMMISSIONER LAURIE: Well, let me --

20 COMMISSIONER MOORE: Mr. Chairman, I --
21 Bob, before you -- could I just ask a question, a
22 clarifying question?

23 COMMISSIONER LAURIE: Please do.

24 COMMISSIONER MOORE: If I can. Roger,
25 I'm not sure I understood what your recommendation

1 is at the end of this. I'm -- I'm hearing that
2 there are still minor flaws in the -- in the
3 application. Technically, that would mean that
4 the recommendation would be it is still data
5 inadequate, we'll come back and visit this again
6 as soon as we can.

7 Then second, I understood that in
8 addition to everything else, they'd like to
9 expedite -- use expedited processes in order to
10 have this before the Committee, but that it
11 technically doesn't meet at least two of those
12 criteria. In both cases I heard air quality
13 concerns come up.

14 Now, energy crisis or no, and we can
15 debate whether we're really in a crisis that is
16 physical or political offline, I suppose. But the
17 point is that we have a set of rules, and unless I
18 misheard you, the rule -- that this application
19 doesn't quite meet the test yet.

20 Am I missing something?

21 MR. JOHNSON: No, you have it right.
22 This application still has minor bits of
23 information that we have not been able to develop
24 from the Applicant.

25 COMMISSIONER MOORE: Okay. So under --

1 under normal circumstances, your -- your response,
2 if this -- if I move the clock back two years, a
3 typical response to us would be we're working as
4 hard as we can but we don't -- it's not closed up
5 yet, we'll be back to you with a data -- data
6 adequacy recommendation as soon as we can. But
7 today, it isn't data adequate.

8 MR. JOHNSON: That's correct.

9 COMMISSIONER MOORE: Okay. Thank you.

10 CHAIRMAN KEESE: But the Staff
11 recommendation at this point is that the
12 Commission exercise its discretion and --

13 COMMISSIONER MOORE: Well, I'm --

14 CHAIRMAN KEESE: -- and find it
15 substantially data adequate, where we might --
16 which is different than what we have done in the
17 past, we find it data adequate and move forward.

18 MS. HOLMES: No. Staff's recommendation
19 is not that it be found data adequate.

20 CHAIRMAN KEESE: Okay.

21 COMMISSIONER MOORE: Say that again?

22 MS. HOLMES: Staff's recommendation is
23 not that the project be deemed data adequate,
24 because there still is information missing that's
25 specified in the data adequacy regulations.

1 COMMISSIONER MOORE: And that's where I
2 thought you were going. It's just that I didn't
3 hear Roger actually say that. But it -- the facts
4 would lead me to that, so that's -- that's why I
5 was clarifying what I had heard.

6 COMMISSIONER LAURIE: Okay. Well, I'm
7 still confused.

8 CHAIRMAN KEESE: As is the Chairman.
9 (Laughter.)

10 COMMISSIONER LAURIE: Okay. Are you
11 asking us to deem the application complete for
12 purposes of initiating the AFC process, or not?

13 MR. JOHNSON: That was my intent, was
14 for the Commission --

15 COMMISSIONER LAURIE: Okay. Well, I'm
16 sorry Roger, I didn't -- I didn't mean to
17 interrupt you. So your -- your intent is to ask
18 us to reach a determination that the application
19 is -- is substantially data adequate, thus
20 initiating the AFC process. Is that -- is that a
21 correct statement, or not?

22 Or -- or even -- why don't you tell us
23 what you're trying to accomplish, what do you want
24 to do?

25 MS. HOLMES: We want review of the

1 project to -- to begin.

2 COMMISSIONER LAURIE: Okay. And is it
3 your feeling that that can be accomplished even
4 though the data that's lacking would normally be
5 filed at this time?

6 MS. HOLMES: That's correct.

7 COMMISSIONER LAURIE: Okay.

8 Mr. Chairman, a couple thoughts. In our
9 data adequacy process, and since I've been here
10 we've never had a complete review of our data
11 adequacy regs, and I know in some cases we want to
12 increase the requirement. I think in other cases
13 there are things we require in data adequacy that
14 need not be in data adequacy, that can be obtained
15 sometime during the course of the AFC process.

16 So I, for one, have no difficulty in
17 accepting a recommendation that this project
18 should be deemed substantially data adequate. But
19 then we run into an issue of expediting. Well,
20 every project wants to be expedited, and I don't
21 know why this project is any different than any
22 other project.

23 So I want to know what the rules are.
24 If our rules are deficient because there's a
25 project out there that should be on some expedited

1 run but it can't because of our rules, well, then
2 our rules should change if we think that that's
3 the case. So I want to know what our rules are,
4 and then, out of fairness to every developer,
5 everybody's got to have an understanding of what
6 those rules are, and we can't apply it to one and
7 not apply it to another. So I would want to know
8 what's different about this case.

9 Again, if our rules are deficient so
10 that we are not moving these projects as quickly
11 as we can, and if we need more flexibility or more
12 latitude, then we should change the rules.
13 Otherwise, everybody's got to have an
14 understanding of what those rules are, and
15 everybody's going to comply with them.

16 COMMISSIONER PERNELL: Mr. Chairman.

17 CHAIRMAN KEESE: Commissioner Pernell,
18 let me -- give me a second here.

19 Does Staff care to indicate what's
20 different about this project?

21 MR. JOHNSON: Yes, I would.

22 First, on the request that we be
23 directed to expedite. I wasn't requesting that
24 the project be given the six-month schedule even
25 though they didn't meet the requirements. I'm

1 suggesting if we do find it -- at the Commission's
2 desire to start the process today, that we would
3 -- it would be deemed data adequate or started
4 under our normal 12-month process, not the six-
5 month. However, that does not prohibit the
6 Commission, the Committee, and the Staff, from
7 working as expeditiously as we can to complete the
8 review of the project in the most expeditious
9 manner.

10 So we are able to --

11 COMMISSIONER LAURIE: Okay. Now --
12 Roger, isn't that true in every case --

13 MR. JOHNSON: It is, in every case.

14 COMMISSIONER LAURIE: -- it's a question
15 of in-house policy whether -- and I know your
16 division has talked about this for years, whether
17 you take those easy projects, and by easy I don't
18 know exactly what I mean by that, but projects
19 that are less controversial, or on the face have
20 less environmental impact, and you push those
21 through first, or do you take everybody equally.

22 That's been a subject of debate in-house
23 for years. And so to adopt a policy saying we
24 have these groups of projects that we think we can
25 get done more quickly, should we prioritize those.

1 Well, I would suggest that that's a question of
2 Commission policy. It's something either for your
3 division to talk about first, or if the Commission
4 determines it should be a Commission policy to get
5 the easy ones out first, well, maybe that's --
6 that's what we should do.

7 But our rules do not prohibit us from
8 taking a project that we can -- we think we can
9 get done in a shorter time span, and putting
10 resources to it and getting it done.

11 MR. JOHNSON: That's correct.

12 CHAIRMAN KEESE: Commissioner Pernell
13 has a quick question, then I'm going to pursue
14 this line a little bit more.

15 COMMISSIONER PERNELL: Thank you, Mr.
16 Chairman.

17 My question is -- is what is the
18 information that you don't have, what is missing
19 under this project's package?

20 MR. JOHNSON: According to the
21 regulations, the Applicant has -- has yet to
22 identify the SOx control technology that will be
23 used for mitigating the SOx emissions for air
24 quality, and also, the PM10 impacts.

25 So they still need to identify how

1 they're going to develop those emission reduction
2 credits for the SOx and the PM10. The Applicant
3 is looking at options, but they have not
4 identified their option that they propose. That's
5 something that will be part of the DOC that comes
6 out from the air district.

7 And I might add, the air district has
8 found the application to be complete for their
9 purposes of processing the application to issue
10 the DOC.

11 COMMISSIONER PERNELL: Is that the only
12 --

13 MR. JOHNSON: For Air --

14 COMMISSIONER PERNELL: -- you're looking
15 at -- is that the only information that's lacking,
16 Air Quality information? Is there anything else?

17 MR. JOHNSON: No, we -- we had
18 identified additional items that would've been
19 required for the six-month, and that was to show
20 ownership of certain amounts of offsets that they
21 identified, but that's not necessary right now for
22 us, since we're not proposing that they qualify
23 for the six-month process.

24 So the -- the deficiencies they have in
25 Air Quality, asking for proof of ownership is not

1 something that's required.

2 COMMISSIONER LAURIE: Question, Mr.
3 Chairman.

4 Mr. Johnson, given this information,
5 when -- at what point, then, do you need this
6 information in order to run a timely and efficient
7 AFC process?

8 MR. JOHNSON: Well, we need it as soon
9 as possible. The district won't be able to
10 complete their DOC without this information. So
11 the Applicant must decide what they're going to do
12 and propose it to the district for the district to
13 include that in their determination of compliance.

14 CHAIRMAN KEESE: Commissioner Laurie, I
15 think we're going to -- I don't want anybody -- I
16 think everybody should understand what we're
17 talking about, so if it's all right with you, I'd
18 like to bring forward the Applicant and have Mr.
19 Lamb, and would you, for the benefit of the
20 Commission, indicate to us what timeframe you
21 would like to see this project move under, and at
22 what date you would suggest you might be able to
23 have this in operation.

24 MR. JOHNSON: Well, this is the
25 Applicant. I think the Applicant should speak to

1 that.

2 MR. THOMAS: Two issues have been
3 raised.

4 CHAIRMAN KEESE: For the record, please.

5 MR. THOMAS: I'm sorry. Aaron Thomas,
6 with AES.

7 Two issues have been raised. One is the
8 issue of the offsets. The second is the issue of
9 the will serve letter, as it relates to the water
10 necessary for the plant.

11 On the issue of the offsets, it's been
12 properly characterized by Roger in that we are in
13 the process of attempting to secure those offsets
14 and/or, as necessary, create them to the extent
15 that we cannot find them to procure.

16 Under the six-month process, that's
17 required to be in hand at the time to commence
18 that process. Under the 12-month process, it's
19 required that that -- a plan be proposed, and that
20 a certificate cannot be issued until they are
21 secured.

22 So, you know, on our side, we are doing
23 everything to secure those as fast as possible,
24 and would hope that we could connect -- you are
25 working the application while we are attempting to

1 secure those, with the understanding, of course,
2 that certification cannot be provided in the final
3 event until those are secured. One.

4 On the will serve letter, we have
5 submitted a request to the city for that water.
6 The city, as I understand it, has stated to us
7 that, you know, they will process that in due, and
8 as fast as they can, course, to study the impacts
9 of the additional water required to the extent
10 it's -- it is required.

11 Again, that is a condition in the six-
12 month process, to have that in hand at the time to
13 commence. Again, we would hope that we could
14 start that process with that -- with that issue
15 outstanding, obviously needed prior to
16 certification.

17 Those are the two main issues that we
18 see outstanding.

19 In terms of timing, it is our firm
20 commitment that once green lighted for
21 construction, which would be at the culmination of
22 the certification process, we have a three-month
23 timeline from the point of certificate to the
24 point the units can operate.

25 CHAIRMAN KEESE: And -- and what -- have

1 you suggested what date that would be, optimally?

2 MR. THOMAS: Optimally, we've suggested
3 June 1st. Obviously, that -- that would require
4 an exceedingly tight timeline in terms of
5 processing. So, again, I will put out there that
6 three months from the time we receive a
7 certificate, this unit can be online.

8 CHAIRMAN KEESE: Thank you.

9 MR. THOMAS: Thank you.

10 CHAIRMAN KEESE: Any questions form the
11 Commissioners?

12 COMMISSIONER LAURIE: Yes, Mr. Chairman.

13 CHAIRMAN KEESE: Commissioner Laurie.

14 COMMISSIONER LAURIE: I have heard, I
15 have not spoken, have not had any visitations from
16 AES and not spoken to them directly. However,
17 I've heard over the last couple of months that
18 AES, in regards to this project, has been speaking
19 about not only an expedited process but a process
20 that we have never utilized, in regards to their
21 timeframes.

22 And I don't denote this project being
23 any different than any of our other applicants who
24 are all taking the view that in this time, and in
25 this place, the rules should be changed.

1 Well, I'm prepared to change the rules,
2 Mr. Chairman. I'm prepared to have the
3 representatives of the people properly declare an
4 energy emergency, if they're prepared to do that,
5 and allow us to work with modified rules. But I'm
6 also a believer in -- in fairness between all
7 applicants. And fairness, to me, means compliance
8 with the rules.

9 Now, when we adopted the six-month
10 process, Staff will tell you, and we discussed it
11 at the time that we adopted those rules, that
12 every piece of data that went into those regs as a
13 precondition to accepting applications, we were
14 told by Staff, because I asked on every single one
15 of the issues is it critical for you that it be
16 submitted prior to application, and if so, why;
17 otherwise, can it be delayed and heard sometime in
18 the process. And we were told that no, it is
19 imperative in order to get these done in six
20 months that this information must be in house;
21 otherwise, we just cannot get it done. And I
22 accepted those comments, and thus would be wary of
23 any view now that perhaps it is not as important
24 to get that information in.

25 Nevertheless, if this is a time where we

1 should be temporarily changing the rules, great.
2 Happy to discuss it. Happy to determine what
3 those rules should be. Happy to determine how
4 quickly we can get these things in and get these
5 things out. And I'm more than happy and more than
6 -- more than willing to undertake a discussion in
7 that regard.

8 Until we do that, I'm going to require
9 everybody to comply with the rules that have been
10 adopted, which means that this project does not
11 qualify for six months.

12 That doesn't mean that it should not be
13 processed. If we can get this thing out in three
14 months or two months, or five months, great. If
15 we can prioritize this project because it's a
16 repower and -- and we can get it done, then we
17 should do that. But we're going to do it
18 consistent with the law. And that would be my
19 expectation.

20 COMMISSIONER PERNELL: Mr. Chairman,
21 just a --

22 CHAIRMAN KEESE: Let me -- let me
23 clarify with Staff. The Staff's recommendation is
24 that we accept this as a 12-month process --
25 accept this for the 12-month process; correct?

1 MR. JOHNSON: That we begin -- that we
2 begin working on it as a 12-month process. Right.

3 CHAIRMAN KEESE: And -- thank you.

4 Commissioner Pernel.

5 COMMISSIONER PERNELL: Mr. Chairman, let
6 me say for the record, as a member of the Siting
7 Committee, I'm -- I think our rules are fine. I'm
8 not ready to change the rules. I am not ready to
9 -- to -- we have an energy challenge, and -- and
10 we are stepping up to that, the Commission is
11 doing its part. Staff, all of them, everybody up
12 here is working very hard.

13 However, I'm concerned about the air
14 quality issue, given the AES history in this area.
15 And I will want to know that -- that the local
16 agencies and officials are comfortable with this.
17 We have a set of rules, and I agree with
18 Commissioner Laurie, we have a set of rules that
19 say you have to have certain things in place. And
20 if it's not there, it's not there. I don't think
21 we should single out and change the rules for any
22 one applicant.

23 I think our rules are fine. It's been
24 working. We have -- have actually licensed ten
25 plants. We got another four or five that's coming

1 up next month to this Commission. I think we're
2 doing fine in that area.

3 So that would be my comments. I'm not
4 ready to make exceptions for any one applicant,
5 because then we're going to get ourselves into a
6 situation where we've got to make exceptions for
7 all applicants.

8 CHAIRMAN KEESE: Thank you, Commissioner
9 Pernell.

10 I do -- we do not, as I understand it,
11 we do not have a suggestion to change the rules
12 today. What we have is a suggestion that we use
13 our discretion in finding the data adequacy step.

14 COMMISSIONER LAURIE; Mr. Chairman, if I
15 may. I -- I wouldn't put it in that term. Staff
16 is recommending, their statement is that data
17 adequacy requirements have been substantially met.
18 That translates into data adequate requirements
19 have been met. And so the motion before the
20 board, before the Commission, is that data
21 adequacy requirements have been met.

22 Of course, they can all be met if
23 they're substantially met. And I'm not prepared
24 to make a finding that they're -- they've been
25 substantially met, and therefore must be approved

1 they've been met if Staff recommends that they've
2 been substantially met. That's a -- a difference,
3 to me. And I'm not about to, again, treat this
4 project different than any other.

5 If Staff recommends that in looking at
6 the data adequacy requirements they've been
7 substantially met and can live with the
8 deficiencies, then they are asking us to make a
9 finding that data adequacy requirements have been
10 met.

11 CHAIRMAN KEESE: Thank you.

12 Mr. Pak.

13 MR. PAK: Thank you, Mr. Chairman. For
14 the record, my name is Alvin Pak. I'm an attorney
15 with the San Francisco law firm of Jeffer,
16 Mangels, Butler and Marmaro. I am counsel to the
17 City of Huntington Beach.

18 Commissioners, we were not provided with
19 the Staff's recommendation earlier, so I apologize
20 for our late comments. But our review of this,
21 the City is a reviewing agency under your
22 regulations, and we are in the process of
23 reviewing two particular aspects of this
24 application.

25 First, having to do with the -- the

1 Applicant's submittal of information regarding the
2 air emission requirements, and the City of
3 Huntington Beach is the serving water agency for
4 this plant. So we're reviewing their request for
5 water service, as well.

6 We have a great concern with accepting
7 this application for processing under the
8 Commission's fast track procedures. As
9 Commissioner Pernell indicated, we're all trying
10 to step up to address the current market
11 perturbations in the State of California with
12 respect to electricity services. However,
13 acceptance of this application for the fast track
14 process places agencies such as the City of
15 Huntington Beach under time constraints.

16 So --

17 CHAIRMAN KEESE: Mr. Pak, the
18 recommendation is that we accept this for our 12-
19 month process.

20 MR. JOHNSON: Not the accelerated.

21 CHAIRMAN KEESE: Not the accelerated.

22 MR. PAK: Oh, I'm sorry. I thought the
23 -- the Staff's --

24 CHAIRMAN KEESE: We're not accepting it
25 for the six-month process. We're accepting it for

1 the 12-month process. The language you heard was
2 that we will do it as fast as we can in the 12-
3 month process. But we're -- we're -- we have two
4 -- we have a number of different processes.

5 The two that are under discussion here
6 today are the six-month and the 12-month. The
7 recommendation of Staff is we accept it for the
8 12-month process.

9 MR. PAK: Okay. I misunderstood. I'm
10 sorry, Commissioner.

11 CHAIRMAN KEESE: Any other comments from
12 Commissioners?

13 EX OFFICIO MEMBER BOYD: Yes, Mr.
14 Chairman.

15 CHAIRMAN KEESE: Mr. Boyd.

16 EX OFFICIO MEMBER BOYD: As a non-voting
17 member of this group I have greater liberty to
18 flit about the Staff and know what's going on than
19 some of my fellow Commissioners, for obvious
20 reasons of -- of dealing with specific siting
21 process. And as many of you know, we're operating
22 today under the laws, rules, and regulations that
23 are in effect today. So I -- I concur and
24 empathize and sympathize with every comment that
25 my fellow Commissioners made today about process.

1 Many of us know that as we speak, the
2 Staff is poring over the laws, rules and
3 regulations that affect the operations of this
4 Commission as it relates to siting. All of us
5 know that -- that the world that existed the day
6 you all voted to step up processes and what have
7 you, the world is different today than it was
8 then. Things have not gotten better. They've
9 unfortunately, for the citizens of this state,
10 gotten worse.

11 And I, for one, were I a voting member
12 of this body today, would allow myself to stretch
13 to agree with the Staff's recommendation of -- of
14 data adequacy in order to keep this process going
15 within the 12-month process, and invite people to,
16 if they can do better, do better in the future.

17 I'm particularly troubled by this
18 particular -- by this application because of other
19 positions I hold which allow me, or require that I
20 participate every single day in a body of people
21 who sits down and sees whether or not we're going
22 to keep the lights on today, and, you know, what
23 are our imports, what are our exports, who's
24 running, who's not running, what's the expected
25 outage, what's the actual outage. It's always a

1 hell of a lot more than historical averages. And
2 who has a problem, and who's not running, and who
3 is running.

4 And the organization we're dealing with
5 is not one of my favorite organizations in this
6 state. AES's track record, in my opinion, is --
7 is not the greatest in the world. However, I do
8 know that they are working on a daily basis with
9 air quality officials to rectify their -- the
10 perceptions of realities that they face, relative
11 to the air quality laws, rules and regulations of
12 this state and the interpretation of those rules,
13 and the perception of -- of what those rules
14 require versus the reality of the way they're
15 administered.

16 And I think all that is getting fixed
17 with better and better understanding, and I think
18 the Applicant in question is understanding better
19 the life, the way life goes on in the nation State
20 of California. So we need these megawatts online.
21 We need to swamp the damn system with megawatts in
22 order to turn the market issue around.

23 And so I would be supportive of doing
24 everything we can to help these people get this
25 plant online, and I would trust them to keep their

1 word to -- to run it diligently and help the State
2 of California with its -- with its current crisis.
3 And I would think we would make the same offer,
4 and probably have, to every single generator, and
5 with each passing day we'll see more and we'll be
6 dealing with more, and we probably as a body will
7 be looking at the rules and regulations that
8 affect the way we deal with this, until we get
9 ourselves out of the current situation.

10 So like it or not, we probably will have
11 to find ourselves working diligently with this --
12 with these people, and we will take them at their
13 word with regard to what they can do to meet the
14 needs of this organization, and -- and get
15 ourselves out of this present dilemma that we find
16 ourselves in.

17 CHAIRMAN KEESE: Thank you, Mr. Boyd.

18 COMMISSIONER LAURIE; Mr. Chairman --

19 CHAIRMAN KEESE: Commissioner Laurie.

20 COMMISSIONER LAURIE: -- if I may. I
21 don't think we're being asked to do anything
22 different in this case. I think substantiality is
23 -- is something that is a factor of life. If our
24 regs, for example, required applications to be
25 printed in black ink, and -- and I messed up and I

1 submitted my application in blue, and I said, you
2 know, it's going to take 48 hours to turn this
3 around, can you start the process. Well, I -- I
4 would expect for somebody to consider that that
5 application is in substantial compliance. Or, if
6 I had to turn in 39 copies and I only turned in
7 38, and I say I'll bring you back one more copy
8 tomorrow, is that substantial compliance.

9 And substantial compliance is something
10 that we live with every day. Not as the Energy
11 Commission, but really as part of life. So the
12 question in my mind is are we in substantial
13 compliance here.

14 Staff indicates that the data that's
15 missing is such that it, by necessity, must be in
16 by a given point in time, and thus, recommending
17 that there has been substantial compliance with
18 data adequacy requirements. Again, what that
19 means to me is that what I'm hearing is a request
20 to make a finding of data adequacy.

21 Now, I am prepared to offer such a
22 motion.

23 On the question of timing, whether or
24 not this thing gets done in three, four, five, six
25 months, is, I think, primarily dependent upon the

1 extent to which the Applicant has their act
2 together, and can meet the requirements of the
3 law.

4 That having been said, Mr. Chairman, I
5 would move that this project be found to be data
6 adequate.

7 CHAIRMAN KEESE: Motion, Commissioner
8 Laurie.

9 COMMISSIONER ROSENFELD: Second.

10 CHAIRMAN KEESE: Second, Commissioner
11 Rosenfeld.

12 COMMISSIONER MOORE: On the motion.

13 CHAIRMAN KEESE: Commissioner Moore on
14 the motion.

15 COMMISSIONER MOORE: On the motion, Mr.
16 Chairman, I'm going to oppose the motion. And I
17 think while I agree with much of what Commissioner
18 Laurie said in his opening remarks, and I
19 certainly agree and sympathize with the position
20 that Commissioner Boyd finds himself in in
21 reviewing some of these things during the day, I
22 think that even in the midst of a crisis, whether
23 it really is or not, there is a great need to keep
24 your head about you and to keep some sense of
25 order. Otherwise, you'll find yourself in

1 different and perhaps worse crisis tomorrow.

2 One of the problems that I've had with
3 applicants who in a ostensibly open and
4 competitive market situation, and I think we still
5 are operating at least under the framework of
6 that, is that many of them will tend to game the
7 system to the extent that they can. And that's
8 probably not only their right, but it's their
9 responsibility where the system gives.

10 I've had attempts made to game the
11 information process in areas where I preside on
12 the cases. Frankly, I resent it, not only from
13 the fact that it represents a lack of rigor on the
14 part of the applicants, who should know better.
15 But it also attempts to slide one on any of their
16 competitors.

17 If we have a rule set and if we have a
18 competitive situation, then the rule set should
19 dominate, and it should mean what it says. You
20 submit your data, you have it complete, or you're
21 not complete. You either are, or you're not. And
22 the difficulty with you are, mostly, is that it's
23 hard to know where to draw the line. And you end
24 up adjudicating by exception or ad hoc. And I'm
25 not prepared to do that, not -- not in this world.

1 I'm -- I'm also not convinced that the
2 discretion, in terms of timing, properly belongs
3 with the Committee and not with the Commission.
4 And a Presiding Member of a Committee has great
5 latitude in terms of adjusting schedules, moving
6 things up or down, and, frankly, finding
7 concessions where they're necessary and -- and
8 making the process adapt accordingly.

9 So I'll tell you that as far as
10 discretion with the Committee members goes, I'm
11 very happy to see the Committee members either
12 work harder, longer. Certainly Commissioner
13 Laurie and Commissioner Keese have proved that
14 they can go beyond the call of duty in a South Bay
15 case, where they've put in many, many extra days,
16 and I think that they're meeting that test.

17 I'm also willing to concede that there
18 are differences in plant type, repower versus
19 green field site, that will make a difference. A
20 repower clearly can come online many, many months
21 or even years earlier than a green field site. As
22 a consequence, I -- I have my doubts as to whether
23 adjusting the system to influence the speed in
24 which a green field site comes on really makes
25 much difference at this level.

1 Be that as it may, it seems to me that
2 given the evidence that we have, this project is
3 not data adequate, and I would hate to send a
4 signal out through the wider world that this is
5 something that can be adjudicated here, if you
6 just make a good enough case that you're going to
7 come on and serve the grid. Hopefully, all of
8 these projects will serve the grid, unless, of
9 course, they find the opportunity to sell out of
10 state, and then cause that out of state power to
11 be sold back to us at two and three times the
12 rate, under -- under the existing rules.

13 So with that, I'll tell you I'm going to
14 oppose the motion.

15 COMMISSIONER LAURIE: Mr. Chairman, if I
16 may.

17 CHAIRMAN KEESE: Commissioner Laurie.

18 COMMISSIONER LAURIE: I respect and in
19 nearly -- and am in nearly total agreement with
20 the comments of Commissioner Moore.

21 It is not my intent nor my desire to
22 treat this project any differently because the
23 world is talking about the need for more immediate
24 generation for California. Again, we are free to
25 change the rules to respond to that if it is

1 deemed necessary to do so.

2 I think the reason I'm prepared,
3 Commissioner Moore, to make a motion affirmatively
4 in this regard is you and I have a somewhat
5 different philosophy on data adequacy, and I
6 respect and understand your views. But had I --
7 I'm really a substantial compliance guy. And if
8 six months or a year, or two years ago, Staff
9 would've made an offer of substantial compliance
10 and they can work with what they perceive to be
11 minor deficiencies, I would've made an affirmative
12 action at that time, too.

13 So my action today is not at all
14 dependent upon the current circumstances we find
15 ourselves in but, rather, just the general
16 approach that I singularly prefer flexibility in
17 the process, recognizing that it is -- could be a
18 challenge to determine where to draw the line.

19 I also agree that the timing of any case
20 is in the hands of the Committee hearing the case.
21 And I did not mean -- I don't know who's assigned
22 to this case, or who's going to get assigned to
23 this case. And I didn't mean to step on the
24 prerogatives of whoever that committee might be.

25 COMMISSIONER MOORE: Unless it's you.

1 CHAIRMAN KEESE: We have -- we have
2 additional public comment, I believe.

3 Come forward, please.

4 MR. LAMB: Matt Lamb, the City of
5 Huntington Beach. Thank you for the opportunity
6 to speak to this issue.

7 On the specific issue, I think where we
8 were getting a little concerned is that the
9 Applicant amended their application in a
10 supplemental, requesting the six -- you know, the
11 six-month process.

12 One of our concerns is that, okay, if in
13 effect you are now finding it data adequate, as
14 I'm understanding, if you move towards data
15 adequacy under the 12-month process, that that's
16 good. Then under the 12-month process, you know,
17 it would be my understanding that certainly if --
18 if less time is needed, if it only takes two or
19 three months to do it, then that's great. But if
20 it takes more time, then we don't slip back into
21 this six-month process.

22 That means, to me, one of the things I'd
23 like you to consider is making sure that -- that
24 we don't slip back into the six-month process by
25 default. That, in effect, if they want to move

1 back into the six-month process they should come
2 back before you for some type of action.

3 CHAIRMAN KEESE: Actually, they clearly
4 would.

5 MR. LAMB: Okay. I just wanted to
6 clarify that. And then --

7 CHAIRMAN KEESE: This is -- this will
8 not slip back into the six-month without them
9 coming back to us, and it would be quite a stretch
10 to consider that it would slip back to those
11 things.

12 MR. LAMB: Good. And I appreciate the
13 comments.

14 Again, you know, we're -- as we've said
15 many times before, you know, the -- the City of
16 Huntington Beach, you know, is -- is aware of the
17 energy crisis, and certainly is trying to work
18 with Staff, trying to work with AES as best as
19 possible.

20 But the city, as you know, is a beach
21 community. It has nine million visitors annually.
22 It is known as Surf City, and as you are aware,
23 the state legislature did pass AB 411 in July of
24 1998, you know, effective July 1st, 1999, changed
25 after this, you know, this plant, basically Units

1 3 and 4 had closed, and that has required
2 basically the city to expand numerous resources in
3 the amount of \$2 million, A, to study it, and also
4 to abate, which is, you know, indicator bacteria
5 basically causing beach closures, or water
6 closures, within the City of Huntington Beach.

7 Our concern is, is that we have provided
8 studies to Staff, and as increasing information
9 becomes available to us, there is an ever
10 increasing indication that there's a correlation
11 between the heated outfall of this plant and the
12 amount of bacteria that's basically transported
13 into the surf zone. That's a serious issue.

14 And our concern is the timing issue.
15 That means the time it would take to make sure
16 that AES completes their portion of the study to
17 either say that they're not the problem, or that
18 it needs to be mitigated. We want to make sure
19 that as we move through this process, that that is
20 -- is one of the foremost issues that, as the
21 Commission and the Staff analyze this, that -- our
22 concern is when we move through an expedited
23 process, sometimes the opportunity to analyze
24 things properly, to get the right type of
25 mitigations forward, conditions forward, and that

1 -- that in effect empowers your enforcement arm.

2 And in the past you've had that time to
3 make sure that the strength of the CEC has always
4 been in analysis, and then the enforcement arm's
5 had a good package in which to work with AES and
6 the community, or the Applicant and the community,
7 to make sure that there's a level playing field.

8 Basically, you know, I think you've
9 brought up the point of AES's record in the air
10 quality. I think we're concerned about that, as
11 well. You know, yes, they seem to be making
12 efforts with SAQMD, but they were fined \$17
13 million. And that doesn't bode well. That's --
14 that's a big concern for us. It means are they
15 going to be honest players going forward. And
16 when you're talking about new power and the
17 expedited review process, or expedited process,
18 it's a little disconcerting how -- how they're
19 going to be in the community as a player.

20 One of the things we want to take a look
21 at, or at least suggest as we go through this
22 process, depending on how fast the process does or
23 does not move, is that the Commission consider
24 looking at more over-arching conditions. One of
25 the things that this application, if it is moved

1 through the process quickly, it may require a
2 different level of conditioning. That means you
3 may not know what you do not know, and that may
4 require, you know, the Commission and Staff to be
5 more inventive in providing over-arching
6 conditions. And that may include, i.e., like
7 mitigation funding up front by the Applicant as --
8 under the direction of the CEC, so that any
9 mitigations or issues that come in subsequent to
10 the repower, that's a concern.

11 And lastly, the one thing we're all
12 concerned about is that if this power is put
13 online, that the power stays in California. As a
14 city, if we're going to go through this process
15 and be a responding agency and be impacted by this
16 infrastructure, we certainly would like to see
17 this power stay completely within the State of
18 California.

19 Thank you for your time.

20 CHAIRMAN KEESE: Thank you very much.

21 We have a motion and a second.

22 COMMISSIONER PERNELL: Mr. Chairman, on
23 the motion.

24 CHAIRMAN KEESE: Commissioner Pernell.

25 COMMISSIONER PERNELL: Mr. Chairman,

1 there's been some confusion early on, and I think
2 I have it, and that this will qualify if the
3 Commission so desires, as a 12-month process.

4 I would -- I would ask the maker of the
5 motion to indicate that in the motion, if
6 possible. Or I can do a friendly amendment.

7 CHAIRMAN KEESE: That -- Staff's
8 recommendation is that this be found data adequate
9 for the 12-month process. I believe that was the
10 motion of Commissioner Laurie.

11 COMMISSIONER LAURIE: I would concur
12 that that can be added to the motion, Mr.
13 Chairman.

14 CHAIRMAN KEESE: Thank you.

15 COMMISSIONER PERNELL: Thank you, Mr.
16 Chairman.

17 CHAIRMAN KEESE: All in favor?

18 (Ayes.)

19 CHAIRMAN KEESE: Opposed?

20 (No.)

21 CHAIRMAN KEESE: Adopted, four to
22 nothing -- four to one, I'm sorry.

23 (Laughter.)

24 CHAIRMAN KEESE: Four to one. Not an
25 abstention.

1 All right. I would at this time, then,
2 entertain a motion that Commissioner Rosenfeld be
3 the Presiding Member on the Huntington Beach
4 Generating Station Retool, and that Commissioner
5 Pernell be Second.

6 COMMISSIONER LAURIE: So moved, Mr.
7 Chairman.

8 COMMISSIONER MOORE: Second.

9 CHAIRMAN KEESE: Moved by Commissioner
10 Laurie, second by Commissioner Moore.

11 All in favor?

12 (Ayes.)

13 CHAIRMAN KEESE: Adopted, four to
14 nothing.

15 Thank you.

16 Item 8. El Segundo Power Plant
17 Development Project. Possible approval of the
18 Executive Director's data adequate recommendation
19 for the El Segundo Power Plant.

20 MR. REEDE: Good morning, Chairman Keese
21 and Commissioners. My name is James Reede, and
22 I'm the Energy Facility Siting Project Manager
23 assigned to the El Segundo Application for
24 Certification.

25 On December 21st, El Segundo Power

1 Limited Liability Corporation filed an Application
2 for Certification seeking approval from the
3 Commission to replace the existing El Segundo
4 Generating Station Units 1 and 2 in the City of El
5 Segundo with a natural gas-fired combined cycle
6 electric generation facility.

7 Upon initial review, Staff identified
8 some very minor data deficiencies and requested
9 additional information on sections of the
10 Application for Certification. That included Air
11 Quality, Biology, Traffic, Transportation,
12 Transmission System Engineering, Visual Resources,
13 Water, and Worker Safety.

14 Three days later the Applicant provided
15 a supplement to the AFC that addressed all of
16 Staff's concerns. Staff has reviewed this
17 Application for Certification and supplemental
18 information, and believe that it now meets the
19 requirements of the data adequacy regulations.

20 I might add, Chairman Keese, that this
21 particular Applicant came in prior to the process
22 and asked what the rules were. Staff worked
23 diligently to make sure that the Applicant
24 understood all the rules up front, and they
25 attempted on their initial submission to comply

1 with all the rules. As I said, there were only
2 very minor deficiencies, and they were resolved
3 within a three-day period.

4 In light of the discussion on the last
5 item on the agenda, this one is fully adequate.

6 CHAIRMAN KEESE: As was the last one,
7 Mr. Reede.

8 MR. REEDE: No, this one's fully.

9 CHAIRMAN KEESE: It was four to one
10 adequate.

11 (Laughter.)

12 CHAIRMAN KEESE: Thank you, Mr. Reede.
13 Any questions?

14 COMMISSIONER LAURIE: Yes, Mr. Chairman.
15 Mr. Larson. Mr. Smith. Mr. Blees,
16 Jonathan. How are you doing?

17 Do you have this matter, do you have an
18 agenda packet?

19 MR. BLEES: Yes, sir. I do.

20 COMMISSIONER LAURIE: Okay. Can you --
21 Mr. Larson has a letter regarding this item. It
22 is January 19th letter. Mr. Larson, I'm referring
23 to your -- we're talking about El Segundo, the
24 data adequacy, your data adequacy letter on El
25 Segundo.

1 EXECUTIVE DIRECTOR LARSON: Yes.

2 COMMISSIONER LAURIE: If you could just
3 get that.

4 EXECUTIVE DIRECTOR LARSON: Yes, sir.

5 COMMISSIONER LAURIE: Your letter
6 indicates that Staff believes that the project is
7 data adequate. What I need is a recommendation
8 for you -- from you that it's data adequate. And
9 should I assume from your letter that your
10 recommendation is that we find this project to be
11 data adequate?

12 EXECUTIVE DIRECTOR LARSON: Yes.

13 COMMISSIONER LAURIE: Thank you.

14 I would ask in the future that you
15 simply -- if that's the case, that in the future
16 you just stick in a sentence indicating that you
17 concur with Staff's recommendation.

18 EXECUTIVE DIRECTOR LARSON: Right.

19 COMMISSIONER LAURIE: Mr. Chairman, I
20 would move the Executive Director's
21 recommendation.

22 CHAIRMAN KEESE: Motion --

23 COMMISSIONER MOORE: Second.

24 CHAIRMAN KEESE: -- Commissioner Laurie.
25 Second, Commissioner Moore.

1 Any conversation? Any public comment?

2 Hearing none, all in favor?

3 (Ayes.)

4 CHAIRMAN KEESE: Opposed?

5 Adopted, five to nothing.

6 CHAIRMAN KEESE: I'll give you 30

7 seconds.

8 MR. McKINSEY: Thank you, Chairman

9 Keese. I guess at this point the only pertinent
10 thing to do would be to introduce the
11 representatives of the two companies that co-own
12 this project, Dynegy and NRG Energy. With me is
13 Mr. McGee, Scott McGee, of NRG Energy,
14 Incorporated. And also in the audience is Ron
15 Cabe, who is a representative of Dynegy,
16 Incorporated.

17 And I think Mr. Reede hit it on a
18 nutshell that -- that this Applicant has taken all
19 the advice that they've heard, and they're geared
20 up to work very hard. They already have worked
21 very hard, and I think that this project will be a
22 very pleasurable one for the Energy Commission.

23 CHAIRMAN KEESE: Thank you.

24 COMMISSIONER LAURIE: Did you indicate
25 it was NRG?

1 MR. McKINSEY: NRG Energy.

2 COMMISSIONER LAURIE: That's Minneapolis
3 based?

4 MR. McKINSEY: Yes, sir.

5 COMMISSIONER LAURIE: Have they ever
6 done business in California before?

7 MR. McKEE: We've done plenty of
8 business in California, sir.

9 COMMISSIONER LAURIE: Great. Okay,
10 thank you.

11 CHAIRMAN KEESE: Thank you.

12 Item 9, El Segundo Power Plant
13 Redevelopment Project. Possible approval of a
14 Committee.

15 I'd accept a motion that Commissioner
16 Pernell be lead on the El Segundo case, and
17 Commissioner Keese be Second.

18 COMMISSIONER LAURIE: So move.

19 COMMISSIONER MOORE: Second.

20 CHAIRMAN KEESE: Motion, Commissioner
21 Laurie. Second, Commissioner Moore.

22 All in favor?

23 (Ayes.)

24 CHAIRMAN KEESE: Opposed?

25 That's the Committee. Thank you.

1 Item 10. Innovative Efficiency and
2 Renewables Element of the AB 970 Peak Electricity
3 Demand Reduction Program. Possible approval of a
4 grant to Ralph's Grocery Company for \$2 million to
5 install distributed generation that will be run on
6 a renewable fuel.

7 COMMISSIONER PERNELL: Mr. Chairman.

8 CHAIRMAN KEESE: Commissioner Pernell.

9 COMMISSIONER PERNELL: Mr. Chairman,
10 this item was before us at our last Committee
11 hearing. It was pulled for additional
12 information. We have received that information,
13 and I would ask concurrence from the Commission.

14 CHAIRMAN KEESE: Thank you. That's a
15 motion in favor.

16 COMMISSIONER ROSENFELD: Second,
17 Commissioner Rosenfeld.

18 CHAIRMAN KEESE: Any further discussion?
19 Any public comment?

20 Hearing none, all in favor?

21 (Ayes.)

22 CHAIRMAN KEESE: Opposed?

23 Adopted, four to nothing.

24 COMMISSIONER PERNELL: Thank you, Bruce.

25 CHAIRMAN KEESE: Thank you.

1 Item 11 is put over until the 21st,
2 February 21st.

3 We've taken up Item 12.

4 Item 13. AB 970 Appliance Efficiency
5 Regulations Environmental Documents. Possible
6 adoption of an Initial Study and Negative
7 Declaration pursuant to the California
8 Environmental Quality Act, regarding possible
9 environmental impacts relating to revisions to the
10 current Appliance Efficiency Regulations.

11 Do we have somebody to make a
12 presentation?

13 COMMISSIONER PERNELL: Mr. Chairman, I
14 can speak to this on behalf of the Committee.

15 This is simply a -- a Initial Study for
16 the Negative Declaration and Environmental
17 Document, and we had some amendments to it that
18 were reviewed by the Committee. And I would just
19 simply move the adoption of the Initial Study and
20 the Negative Declaration.

21 COMMISSIONER MOORE: I'll second.

22 CHAIRMAN KEESE: Motion, Commissioner
23 Moore -- I'm sorry, motion, Commissioner Pernell.
24 Second, Commissioner Moore.

25 Let me ask if there's any public comment

1 on this issue, I believe? Simple air
2 conditioners.

3 COMMISSIONER PERNELL: Well, Item 14
4 would be the --

5 CHAIRMAN KEESE: I'm sorry. This is
6 Item 13.

7 COMMISSIONER PERNELL: This is Item 13,
8 which is just the Environmental Document. And
9 Item 14 would actually be the appliance --
10 proposed appliance regulation.

11 CHAIRMAN KEESE: Okay. Are you --

12 COMMISSIONER PERNELL: We're on 13.

13 CHAIRMAN KEESE: -- going to hold off on
14 13? Or --

15 MR. MARTIN: I'm Michael Martin. I was
16 not to speak on Item 13, but I am aware that there
17 are no public comments on this document. And you
18 moved so fast in the last few items I think you
19 caught us unaware.

20 CHAIRMAN KEESE: Yeah, I -- I think we
21 did. But what we're doing right now is accepting
22 the documents; correct?

23 MR. MARTIN: That is correct, yes.

24 CHAIRMAN KEESE: Okay. Do you have a
25 comment on that part?

1 MR. MARTIN: No, sir, only -- only to
2 mention that there are no -- have been no public
3 comments received by the people working on this.

4 CHAIRMAN KEESE: Okay. Thank you.

5 I think we can take this one up. Okay,
6 we --

7 COMMISSIONER PERNELL: Shall I move --

8 CHAIRMAN KEESE: -- do we have a motion
9 --

10 COMMISSIONER MOORE: You have a motion.

11 CHAIRMAN KEESE: We have a motion and a
12 second.

13 All in favor?

14 (Ayes.)

15 CHAIRMAN KEESE: Opposed?

16 Adopted --

17 COMMISSIONER LAURIE: I didn't hear the
18 motion, Mr. Chairman.

19 CHAIRMAN KEESE: This is a motion to
20 accept the documents on the efficiency standards.

21 COMMISSIONER LAURIE: I would ask to be
22 included. Thank you.

23 CHAIRMAN KEESE: Five aye, no no's.

24 I'm not going to -- let's make sure we
25 have everybody here for Item 14. Are we ready?

1 MS. HALL: Yes, thank you.

2 CHAIRMAN KEESE: Item 14. AB 970
3 Appliance Efficiency Regulations. Possible
4 adoption of revisions to the current Appliance
5 Efficiency Regulations. The revisions pertain
6 only to central air conditioners and small water
7 heaters and have been developed to comply with the
8 mandate of Assembly Bill 970.

9 COMMISSIONER PERNELL; Mr. Chairman, the
10 Energy Efficiency Committee conducted a rulemaking
11 to consider improving the -- several appliance
12 standards per AB 970. I won't go into all of that
13 because we have -- we have Staff to answer any
14 questions.

15 So with the permission of the Chairman,
16 I would have Mr. Martin begin.

17 MS. HALL: Actually, if I may begin?

18 CHAIRMAN KEESE: Let me -- let me
19 suggest here that we have -- we have four speakers
20 on -- four public members speaking on water
21 heaters. We have six speaking on air
22 conditioning. So why don't you lay the
23 groundwork. Would you like to separate these two,
24 or --

25 MS. HALL: That would be grand. I will

1 give a general overall background, and Mike Martin
2 will give some information, and then if we could
3 split it as you suggest it would be, I think, a
4 much more cohesive discussion.

5 CHAIRMAN KEESE: Thank you.

6 MS. HALL: For the record, my name is
7 Valerie Hall. I'm the Manager of the Residential
8 Buildings and Appliances Office here at the Energy
9 Commission.

10 I'd like to begin by giving a very brief
11 history of what this rulemaking has been about.

12 Basically, in 1998 we began a rulemaking
13 that would update some test methods, more
14 accurately incorporate federal standards, modify
15 certification procedures, streamline information
16 submittal, and improve enforcement of the
17 appliance regulations.

18 This effort was designed to improve the
19 organization and clarity of the appliance
20 regulations, not to increase the stringency of any
21 appliance standard.

22 However, as we're all aware, this summer
23 things changed, and Assembly Bill 970 was signed
24 requiring, among many other things for the Energy
25 Commission, that the Commission update its energy

1 efficiency standards for both buildings and
2 appliance standards pursuant to Public Resources
3 Code Section 25402.

4 On October 19 of 2000, the Committee
5 conducted a workshop in which Staff and the
6 Committee presented some preliminary ideas for
7 appliance regulations, and took, of course, public
8 comment. And we were at that time discussing
9 possible appliance standards covering 20 different
10 appliance types. Most of those were not currently
11 covered by the regulations. In other words, the
12 Commission would be establishing mandatory minimum
13 efficiencies for appliances that currently have no
14 efficiency requirements.

15 Affected appliances included things like
16 distribution transformers; coin-operated clothes
17 washers; beverage vending machines, and a host of
18 other appliance types.

19 The workshop at that time also clarified
20 the intent to merge the goals of the 1998
21 rulemaking with the goals of AB 970.

22 On November 27, 2000, we published draft
23 regulations, we proposed efficiency levels for all
24 new appliances, and also more stringent levels for
25 those appliances already covered by the standards.

1 On December 7th, the Committee held a
2 hearing on the proposed regulations. December 12,
3 we filed appropriate documents with the Office of
4 Administrative Law, which included express terms;
5 in other words, the actual language of the -- of
6 the regulations.

7 December 22nd, that notice and the
8 express terms were published in the California "Z
9 Register", which actually then begins the official
10 45-day language review period.

11 However, in late December the Committee
12 agreed that the best way to accomplish the goal of
13 AB 970 was to split the rulemaking and to focus
14 first on air conditioning equipment and water
15 heaters. These appliances are covered by federal
16 preemption rules, and therefore, if adopted today,
17 cannot be mandatory in California unless DOE
18 grants a waiver, which is a multi-year process.

19 However, these appliances, particularly
20 air conditioning equipment, are major components
21 to electrical peak. Adopting California
22 efficiency levels can assist in developing useful
23 incentive programs to encourage Californians to
24 purchase more efficient equipment.

25 It's important to recognize that the

1 rest of the appliance in the 45-day language
2 require a minimum typically a one-year gap between
3 adoption and mandatory effective date, to allow
4 manufacturers time to retool production lines and
5 to restock as necessary. This -- this fact also
6 contributed to the rationale for splitting the
7 adoption into two parts.

8 On January 9, we published draft 15-day
9 language for air conditioning equipment and water
10 heaters, just -- now focusing it down just
11 exclusively to those appliance types. And on the
12 19th, the Committee conducted a hearing on that
13 draft 15-day language, which allowed us to finesse
14 the language just a little bit more, so that on
15 January 23rd, we published the final 15-day
16 language, which is the language that you have
17 before you today.

18 Should the Commission choose to adopt
19 these standards for improved efficiencies in air
20 conditioning equipment and water heaters today,
21 Staff will refocus its efforts on the remaining
22 appliances covered by the 45-day language, and
23 bring the air conditioners and water heaters sort
24 of into the fold of what we would be doing with
25 the overall project for the appliance

1 efficiencies.

2 So with that general discussion, I would
3 like to turn the mic over to Michael Martin, who
4 can give you some more specific information for
5 today's session.

6 CHAIRMAN KEESE: Mr. Martin.

7 MR. MARTIN: Thank you.

8 The Commission has been regulating
9 central air conditioners, heat pumps, and water
10 heaters since 1977. In 1986, Congress passed the
11 National Appliance Energy Conservation Act, NAECA,
12 that included minimum performance standards for
13 these types of appliances. The act included a
14 schedule for the U.S. Department of Energy to
15 upgrade these standards. Final rules for these
16 appliances were to be published by January 1st,
17 1994.

18 These rulemakings were repeatedly
19 delayed for numerous reasons. Despite Commission
20 Staff's active participation in the federal
21 rulemaking proceedings, in September 2000 there
22 was still considerable doubt whether the final
23 federal rules would be completed during the
24 current administration, and whether, if they were
25 completed before the change of administration,

1 they would be stringent enough to protect
2 California's interest.

3 At that time, the Energy Efficiency
4 Committee instructed Staff to include air
5 conditioners and water heaters in California's
6 planned rulemaking to respond to AB 970. The
7 standards included in the language before you
8 today are the levels proposed by the Commission
9 and other energy efficiency advocates to DOE for
10 the national standards. The federal final rules
11 were eventually published in the Federal Register
12 as recently as January the 17th and January the
13 22nd of this year, and are similar, although not
14 identical to the proposed standards that you are
15 considering today.

16 There is no doubt that the threat of
17 California standards had a major influence on both
18 the publication of the federal rules and the
19 levels that were chosen.

20 I'd like to draw to your attention two
21 features of the 15-day language, which is also
22 referred to as the Express Terms, that you have
23 before you today.

24 The first is the effective date that
25 appears on the top of pages 3 and 6, which reads,

1 in each case, On or after the effective date of a
2 waiver from the federal preemption of such
3 standards.

4 The waiver procedure is exceedingly
5 slow, and states that if and when a waiver is
6 granted it shall take effect three years, or,
7 under some circumstances, five years after the
8 date it's drafted by DOE. Thus, it is most
9 unlikely that the standards that you are voting on
10 today will take effect before the year 2004, and
11 could be much later.

12 The text continues, or, if federal
13 preemption does not apply to such standards, on or
14 after February 7, 2004.

15 This wording was included just in case
16 Congress, at some future date, was to repeal the
17 law under which a waiver can be granted. There is
18 no question that today federal preemption does
19 apply to these standards.

20 Second, I'd like to draw your attention
21 to the most significant differences between the
22 California standards and the newly adopted federal
23 standards.

24 On page 3 of the 15-day language, you'll
25 note that the California standards for air

1 conditioners includes an SEER standard, an EER
2 standard, and a provision requiring a thermostatic
3 expansion valve of similar device that meets
4 specified criteria.

5 SEER is a measure of efficiency at 82
6 degree Fahrenheit, and is included in both the
7 California and federal standards at identical
8 levels.

9 EER is a measure of efficiency at 95
10 degrees Fahrenheit and is included in the
11 California standard but not in the federal
12 standards. This measure is much more meaningful
13 in California than SEER. The thermostatic
14 expansion valve provision is included in the
15 California regulation only.

16 On page 6, the major difference between
17 the California and federal standard is the minimum
18 efficiency -- minimum energy factor for gas water
19 heaters. The California standard is 0.015 more
20 stringent than the federal standard.

21 There are two legislative criteria that
22 the Commission must meet when adopting or revising
23 standards. The standards must be feasible and
24 attainable, and the standards must not result in
25 added total cost to the consumer over the design

1 life of the appliance.

2 The written record shows that both these
3 criteria have been met. Our database shows a
4 large number of models that comply with our
5 proposed standards.

6 We calculated cost effectiveness using
7 the method used by DOE's contractors, and also by
8 the method traditionally used in developing
9 California's Building Standards. We also
10 calculate them two ways. First, for the change
11 from the existing federal standards to the
12 proposed California standards, then from the newly
13 adopted federal standards to the proposed
14 California standards.

15 In all cases there is no added cost to
16 the consumer over the design life of the appliance
17 and, indeed, the consumer will recover his or her
18 investment long before the end of the design life.

19 I can go into much more detail if you
20 wish, but I sense at this time I should confine my
21 further remarks to answering Commissioners'
22 questions, responding to oral comments from the
23 public, and, finally, summarizing any written
24 comments received yesterday afternoon or this
25 morning which are not discussed in oral comments

1 from the public.

2 And if -- there's a bundle of papers
3 here. We have received comments from the Air
4 Conditioning and Refrigeration Institute, the Gas
5 Appliance Manufacturers Association, and
6 California Technology Trade and Commerce Agency.
7 And I've asked Jim if he would make those copies
8 available to you, just in case you spent all last
9 evening reading them.

10 Several recent happenings suggest that
11 there may be an effort in Washington to repeal or
12 at least delay the effective date of these newly
13 enacted federal standards. The Commission needs
14 to adopt the standards before you today to
15 discourage such activities, and to protect
16 California's interest in the case of attempts to
17 repeal the federal standards.

18 Finally, commenters should be aware --
19 excuse me -- that the draft order you are
20 considering states, and I quote,

21 "Because of the very recent
22 adoption of the new federal standards,
23 and the consequent lack of time for
24 interested persons to consider the
25 relationship between the California

1 standards and the federal standards,
2 we will submit a waiver petition for
3 each standard only after providing
4 an opportunity for comment on the
5 pros and cons of seeking and
6 obtaining a waiver. In the
7 alternative, we may reconsider air
8 conditioner and water heater
9 standards when we consider adopting
10 the remainder of the amendments that
11 were proposed in the 45-day language,
12 which will occur in the spring of
13 this year."

14 Approving this amendment today will give
15 California a basis on which to set incentive
16 programs, but not close the door to further
17 consideration of a minimum performance standard
18 before a petition for exemption from preemption is
19 filed.

20 This concludes my presentation. I do
21 have some comments about the ARI submittal, and I
22 understood -- understand that they are not
23 planning to be here.

24 CHAIRMAN KEESE: Why don't we go through
25 the public comment here, and then we'll kind --

1 and let me ask here, Valerie, should we separate
2 air conditioning from the other -- from the
3 expansion valves and -- or just the whole issue of
4 air conditioning?

5 MS. HALL: I think that it will all be
6 combined at some point in the discussion anyway.

7 CHAIRMAN KEESE: All right. Well, let's
8 start -- I see we have two representatives of
9 PG&E, whoever would like to go first. Mr. Hunt.

10 MR. HUNT: Are we on water heaters or
11 air conditioners, sir?

12 CHAIRMAN KEESE: We're on air
13 conditioners.

14 MR. HUNT: My name is Marshall Hunt,
15 Pacific Gas and Electric Company. And I want to
16 first thank you for the opportunity to speak.

17 I'm pleased to be funded by the Public
18 Goods charge, and a member of a customer energy
19 management department. As such, we are working
20 under the auspices of programs recently approved
21 by the California Public Utilities Commission. As
22 such, as desperately need these standards to
23 design our programs which are going to focus on
24 the EER like never before.

25 We very much support these new levels,

1 the TXV, and also we support the consumer
2 equipment levels. We find this to be cost
3 effective levels. We went back to Washington,
4 D.C. As you know, we've supported John Proctor's
5 research, and we are in the process of doing more
6 research at our Technical and Environmental
7 Services lab to do further research on TXV
8 performance, both charge related and air flow
9 related, and stand by to offer any technical
10 support we can.

11 So in a fundamental sense, we are in
12 support of these standards and find that the
13 Staff's recommendations and their report expresses
14 things in a very good way.

15 Any questions?

16 CHAIRMAN KEESE: No, I think that's fine
17 for now.

18 Mr. Fernstrom.

19 MR. FERNSTROM: Thank you. I'm Gary
20 Fernstrom, Senior Program Manager for Pacific Gas
21 and Electric Company.

22 If possible, I'd like to defer my
23 comments until the end, to have a chance to rebut
24 any comments that may be in opposition to the
25 proposed improvements to the standards.

1 CHAIRMAN KEESE: Well, we'll give you a
2 shot.

3 MR. FERNSTROM: Thank you.

4 CHAIRMAN KEESE: You may -- you may or
5 may not give a shot, because I've got other people
6 who've got the same request.

7 (Laughter.)

8 CHAIRMAN KEESE: In writing.
9 David.

10 MR. GOLDSTEIN: Thank you very much, Mr.
11 Chairman, Members of the Commission. I appreciate
12 the opportunity to speak today. My name is David
13 Goldstein, I'm Co-director of the Energy Program
14 of the Natural Resources Defense Council, which,
15 as you know, is a national environmental
16 organization with 80,000 California members.

17 The need for adopting these air
18 conditioner standards almost goes without saying.
19 Air conditioners are about a quarter of peak load
20 in California. These standards would cut that by
21 over 20 percent. It's one of the biggest,
22 fastest, cheapest ways to address the summer
23 problems that we had last summer and will continue
24 to have for the next couple of summers.

25 NRDC has been working closely with Staff

1 here at the Energy Commission, as well as other
2 stakeholders, particularly with PG&E's experts on
3 staff and -- and ones that they have as
4 consultants. And we believe that the proposal is
5 based on all of that experience and expertise in
6 California, and therefore we -- we urge your
7 adoption.

8 Specifically, on the residential air
9 conditioner side, SEER doesn't work very well as a
10 descriptor in California, and that's recognized in
11 the new Title 24 rules that were adopted about a
12 month ago. A 30 percent improvement in SEER gives
13 a much smaller improvement in energy efficiency
14 which depends on climate zones. And that has to
15 do with the fact that measuring air conditioner
16 performance at 82 degrees doesn't really help in a
17 climate where people don't even turn on their air
18 conditioner until it's hotter than 82 degrees.

19 In contrast, the EER is measured at 95, and
20 that's at least in the right direction for where
21 people are -- are using air conditioning in this
22 state. So in addition to addressing the peak load
23 problem, the EER requirement, which is the big
24 difference, one of the two big differences between
25 what the state is proposing here and what the

1 federal government has done, also addresses energy
2 savings to the consumer.

3 The economics, as the Staff report
4 indicates, are very favorable. If -- if utilities
5 had been able to pass on last summer's prices at
6 the grid this would've paid back in about one
7 year. So that's -- it's a pretty good economic
8 deal.

9 And PG&E has done and commissioned some
10 excellent work on why the need for thermal
11 expansion valves.

12 On the commercial side, the standards
13 are based on the Tier 2 standards of the
14 Consortium for Energy Efficiency, which is a
15 consortium that utilities in California and NRDC
16 are members of. These were proposed to ASHRAE to
17 be adopted as a second tier of mandatory standards
18 nationally, and actually I believe were subject to
19 public review on that grounds.

20 The economics are more stringent than
21 the six or eight-year payback based on the 90th
22 percentile -- 90th percentile worst manufacturers'
23 costs that ASHRAE based its primary standards on.
24 So when you put in economics that are more
25 relevant to California's situation and life cycle

1 costing the way the Energy Commission does it,
2 these numbers are appropriate ones that should've
3 been in ASHRAE and should be the ones that
4 California adopts.

5 There are numerous conservatisms in the
6 Staff analysis. It's based on beforehand
7 projections of what the cost of compliance will
8 be. Last time I was before the Commission on this
9 subject, in 1983 and '4, I think it was, the air
10 conditioner industry was saying that standards
11 that subsequently were adopted would cost \$750 or
12 so to meet. The third party analyses of costs
13 that the Commission relied on said no, it's more
14 like half that. And the actual in 1992 or '3 was
15 somewhere between zero and maybe as much as \$50.
16 There's no reason to expect something like that
17 won't happen again.

18 Finally, DOE didn't adopt thermal
19 expansion valves in EER requirements, in part
20 because they were concerned about whether they had
21 legal authority to do that. And I don't believe
22 there's any such concern with respect to the
23 California Energy Commission.

24 Staff made one additional important
25 point about why the Energy Commission should adopt

1 these standards, notwithstanding that part of the
2 benefit would already be obtained under the DOE
3 final rule of January 22nd. The Bush
4 Administration has put that rule, as well as a
5 number of other rules on a variety of subjects,
6 under a 60-day review, under which they can go
7 back and look at the rules and perhaps modify
8 them, or try not to promulgate them. We simply
9 can't be confident, for that reason and a number
10 of others, that the federal rules are to be
11 depended on.

12 In addition, there have been legislative
13 attacks on appliance standards in the past, last
14 year, as well as in the 104th Congress, and there
15 is a widely expressed attitude in the current
16 administration that perhaps the federal government
17 isn't the best place to be doing environmental
18 regulations, but that states, instead, should have
19 the primary responsibility.

20 So I think there are a number of
21 scenarios where California's role in projecting
22 our own needs is critical, and should be acted
23 upon.

24 Conversely, I think the record is pretty
25 clear that when California makes decisions like

1 this on appliance efficiency standards, the market
2 is so big here that we can exercise a favorable
3 influence on neighboring regions, if not on the
4 whole rest of the country. So both to protect
5 our own needs against all eventualities, and to
6 cover some defects in the federal rules that would
7 produce less energy savings, and particularly less
8 peak load savings than we might otherwise get,
9 we'd strongly urge the Commission to adopt these
10 standards today.

11 Thank you very much.

12 CHAIRMAN KEESE: Thank you very much.

13 Any questions? Thank you.

14 Mr. Mullen. Wearing two hats, it looks
15 like.

16 MR. MULLEN: At least. Thank you.

17 I'd like to thank the Commission for
18 taking the time to hear these comments.

19 I have two hats today, as Chairman Keese
20 points out. My first job is to read comments from
21 the Air Conditioning and Refrigeration Institute,
22 ARI, who wishes they could've been here today but
23 could not, for other business. I believe these
24 have been sent to the Commission in writing, and
25 so this is a matter -- an opportunity for the

1 Commissioners to hear them first-hand.

2 The Air Conditioning and Refrigeration
3 Institute hereby submits comments on the Express
4 Terms of proposed amendments to Title 20, Section
5 1604(C)(4). This supplements ARI's other
6 statements on these issues, including for the
7 December 7, 2000 and January 19, 2001 CEC hearings
8 and ARI's supplemental comments dated December 18,
9 2000, which are all incorporated herein by
10 reference.

11 The CEC --

12 CHAIRMAN KEESE: We're not going to hear
13 all seven pages, are we?

14 MR. MULLEN: Yes, sir.

15 CHAIRMAN KEESE: Can you --

16 MR. MULLEN: They are double-spaced, if
17 that's --

18 CHAIRMAN KEESE: I --

19 (Laughter.)

20 CHAIRMAN KEESE: They're in front of us,
21 also double-spaced, so I -- if you could summarize
22 it would be --

23 MR. MULLEN: I'll try and hit the high
24 points, if that would be acceptable.

25 CHAIRMAN KEESE: Okay. That would be --

1 that would be delightful.

2 MR. MULLEN: The CEC indicates that
3 absent compelling reasons to the contrary, it will
4 adopt the standards in the Express Terms. ARI
5 believes there are compelling reasons for the CEC
6 not to adopt such standards.

7 ARI believes the proposed rules are not
8 cost effective, feasible, and attainable, and ARI
9 believes the CEC's life cycle cost analysis is
10 fatally defective. First, it severely
11 underestimates the incremental cost of the
12 equipment. At the proposed standard, CEC uses the
13 baseline manufacturing costs estimated by DOE, but
14 then applies lower markups to estimate the final
15 cost. CEC ignores wholesale markups, which DOE
16 estimated to vary between 1.37 and 1.26.

17 CEC also uses a sales tax of 1.04, which
18 is lower than the current sales tax in California.
19 The net of that is that DOE used a number of \$452
20 for 13 SEER air conditioner additional cost. CEC
21 uses the number of \$292, which is substantially
22 different.

23 Secondly, CEC's energy savings are
24 vastly overestimated. CEC estimates a savings of
25 278 kilowatt hours per year for split air

1 conditioners, based on the use of expansion
2 valves, increasing performance by about --

3 CHAIRMAN KEESE: Can we -- let me ask
4 you a question. Is the ARI opposing the federal
5 standard also, the recently suggested federal
6 standard?

7 MR. MULLEN: Yes, sir. ARI's position
8 was that 12/12 is a reasonable standard, 12 SEER
9 for air conditioner and heat pumps.

10 CHAIRMAN KEESE: Okay. So -- but if
11 that prevailed, then there would be a bigger
12 savings out of --

13 MR. MULLEN: There could be. But I
14 think the point at this juncture, though, is that
15 ARI disagrees with the 11 percent savings credited
16 to the use of a thermal expansion valve,
17 regardless of the SEER level chosen.

18 EER objects to the proposed EER
19 standard. First, as discussed, EER standards have
20 not been demonstrated to be cost effective,
21 feasible, and attainable. Second, they're more
22 difficult to achieve with the new refrigerants,
23 the new HFC refrigerants, R410A coming up, because
24 of the critical temperature difference in the
25 refrigerants.

1 And third, the EER standards discourage
2 the development and sale of variable speed and
3 modulated capacity equipment, which saved
4 consumers energy and money.

5 Expansion valves, ARI recognizes
6 expansion valves are in the marketplace and
7 obviously does not object to their appropriate
8 usage. However, we object to their requirement
9 through government mandate. DOE's notice of
10 proposed rulemaking on central air conditioners
11 and heat pumps states DOE believes the TXV
12 requirement is not justified. ARI agrees with
13 that position.

14 Section 1604(C)(4) will cause confusion
15 and disruption. Express terms state that the
16 requirements on or after the effective date of a
17 waiver from federal preemption for such standards,
18 or if federal preemption does not apply to such
19 standards on or after February 7, 2004. Express
20 terms do not provide guidance to the public as to
21 which standards are or are not preempted;
22 therefore, many readers are likely to be confused
23 as to the effective date of the CEC standards.
24 Such confusion and the resulting disruption
25 themselves are sufficient reason not to proceed

1 with the regulations.

2 If CEC nonetheless proceeds with
3 adopting these sections, ARI would be willing to
4 work with the CEC to find appropriate ways to
5 clarify the situation in relation to the notice of
6 effective dates.

7 CEC should not devote unproductive
8 efforts on adopting preempted standards. ARI
9 urges the Commission not to devote unproductive
10 efforts to adopt rules that are preempted by
11 federal law. We believe that such rules are
12 unwarranted, that a waiver of preemption would not
13 be granted by DOE. The proposed rules would
14 impose too much of a burden and would have a
15 detrimental effect on consumer choices and on
16 manufacturers.

17 The CEC would put these rules into
18 effect without lead times that are well recognized
19 by Congress and the DOE, as necessary, to allow
20 for redesign, retooling, distribution, and other
21 steps required to meet new standards. A waiver,
22 even if granted, could not in any effect -- go
23 into effect for at least three to five years
24 thereafter, and the efforts involved in putting
25 such regulations into effect and implementing them

1 would drain resources that could be devoted to
2 addressing the real reasons for California's
3 energy problem.

4 ARI stands ready to work with the CEC on
5 more productive approaches.

6 Can I answer any questions on ARI's
7 statement?

8 EX OFFICIO MEMBER BOYD: Mr. Chairman.

9 CHAIRMAN KEESE: Mr. Boyd.

10 EX OFFICIO MEMBER BOYD: I note that
11 your analysis relative to the -- your assertion
12 that CEC's energy savings are vastly overestimated
13 are predicated on, among many statements, one that
14 says the Energy Commission used the 1.276 dollars
15 per kilowatt hour as the average price of
16 electricity, which you state should be more like
17 seven cents per kilowatt hour.

18 What degree of confidence do you have
19 that that accurately reflects reality in
20 California?

21 MR. MULLEN: I would be willing to go
22 back and ask ARI. There almost looks like there's
23 a decimal place off in there somewhere.

24 EX OFFICIO MEMBER BOYD: That's probably
25 an unfair question, but --

1 MR. BLEES: There's a simple answer, Mr.
2 Boyd, and Commission --

3 EX OFFICIO MEMBER BOYD: Maybe you don't
4 want to answer the question. It may have been
5 more effective just as a question.

6 MR. BLEES: I'm sorry, I can answer
7 that. There's a simple explanation.

8 COMMISSIONER LAURIE: No, Jon, I don't
9 think Mr. Boyd is asking for a response from you.

10 MR. MULLEN: Are there other questions
11 that I should refer back to ARI?

12 CHAIRMAN KEESE: No, I -- I think we're
13 okay now. Do you want to put on the other hat?

14 MR. MULLEN: Yes, I'd like to put on my
15 other hat, which is for my employer, Lennox
16 International, a manufacturer of heating,
17 ventilating, air conditioning equipment.

18 I'd like to comment on two provisions.
19 One, the thermal expansion valve, and second, the
20 EER provision.

21 First, Lennox is not opposed to
22 expansion -- the use of expansion valves where
23 necessary, but do not believe they should be
24 mandated as part of a system design. CEC's cost
25 benefit analysis was not available prior to the

1 meeting this morning, and I picked a copy off the
2 table so I really haven't had a chance to analyze
3 it, and my comments will be -- will not --
4 generally not reference that document.

5 The cost to the consumers of this
6 regulation could be as high as \$50 million per
7 year, based on the cost that was supplied in
8 documentation to the CEC by two or three home
9 builders and by one of the contractors to CEC.
10 Those people quoted the cost of the expansion
11 valve at four points of I believe between 100 and
12 \$150 per air conditioning system additional.

13 For whatever reason, in this document on
14 the table this morning, the CEC Staff has chosen
15 to use a value of \$21 as the additional cost.
16 Based on \$21, the payback period is 6.2 years. If
17 you use the home builders' costs, which must
18 reflect their costs in the marketplace today, the
19 payback period would be at least five times that,
20 which would be 30 years, which would be much
21 longer than the life of the equipment.

22 That's also based on an 11 percent
23 energy reduction which seems to be claimed based
24 on rating improvement, discharge units in the
25 field, and reduced air flow. We believe that

1 significantly overstates the benefit. For
2 example, new CEC regulations regarding duct
3 sizing, duct sealing installations in Title 24,
4 will certainly take away some of those issues in
5 the future.

6 Secondly, Lennox has submitted data that
7 indicates that the performance improvement from an
8 expansion valve is less than that shown by CEC's
9 contractor. We've started a discussion with the
10 CEC technical staff to pursue that further.
11 Information is being interchanged and a meeting is
12 set for next week.

13 The fuel charging procedures and data
14 CEC relies on that indicate or lead to the
15 assumption of widespread fuel mischarging have not
16 been available to the industry for review and
17 analysis. This -- the conclusion by the CEC does
18 not match our industry's perception of the fuel
19 status of refrigerant charge in air conditioners.

20 Also, air flow data from CEC's
21 contractor indicting lower air flow through air
22 conditioning units does not match our perception
23 of the typical air flow problems in the field,
24 which are more related to air delivery to the
25 space as opposed to air flow through the units.

1 There's also been a statement made that
2 there would be a rating gain by using a TXV, and
3 that will not occur. The industry believes that
4 the mandatory prescription of an expansion device
5 is preempted by EPCA, Energy Policy and
6 Conservation Act. DOE chose not to include it in
7 the federal rulemaking for what we believe are
8 valid reasons. The net of all that is that this
9 will cost California consumers a lot of money for
10 claimed reduction in energy consumption that
11 probably will not occur.

12 While we believe this portion of the
13 regulation could be withdrawn -- should be
14 withdrawn completely, at this time we would ask
15 that it be removed from these rules until the
16 technical discussion is concluded with all parties
17 having adequate access to the information, and
18 some common understanding of what the savings are.

19 And EER regulations, the current
20 regulations propose EER ratings in addition to the
21 SEER rating required by federal regulations on the
22 basis that units operating 100 percent of the time
23 at peak demand conditions and that the higher
24 ambient rating is more appropriate. However, the
25 EER at 95 degrees is a steady state test of an air

1 conditioner's efficiency, whereas SEER is a test
2 of both the steady state efficiency and the
3 cycling efficiency, taking into account the losses
4 in energy that occur due to cycling the unit on
5 and off.

6 One of CEC's contractors has submitted a
7 document to CEC that seems to have been overlooked
8 in establishing the Commission's position on the
9 need for EER ratings. To quote Mr. Proctor,
10 characteristics of the residential population at
11 residential peak, important to remember that not
12 all potential measures will be effective depending
13 on the characteristics of the population to which
14 they applied. There are four classes of
15 residential customers on peak. These classes are
16 the unit is either off, the unit is on
17 continuously, it is cycling off and on, or it's in
18 a mode where it may cycle off.

19 The percentages within each class,
20 depending on the local demographics and time in
21 question, in one California study the percentages
22 were 20 percent of the units are off at peak, 20
23 percent of the units run continuously at peak, 44
24 percent of the units are cycling at peak load, and
25 16 percent may cycle.

1 In other words, what Mr. Proctor has
2 concluded is if I took about eight air
3 conditioners, one or two would be continuously
4 running at peak. Three, four, or five could be
5 cycling -- would be cycling off and on. They
6 would be running part of the time and off part of
7 the time. So the cyclic efficiency would be
8 important for them. And there is a second air
9 conditioner or two out there that may cycle off,
10 so the cyclic efficiency may be important.

11 The net of that to me is that cyclic
12 efficiency is probably more important at peak
13 based on his statistics and study state, and
14 therefore the SEER may be a better indicator of
15 peak demand than EER.

16 Therefore, we believe that the EER
17 portion of the regulations should be withdrawn
18 based on Mr. Proctor's information that cyclic
19 operation is the most typical mode of operation at
20 peak conditions.

21 That would be the end of my comments,
22 and I would try and answer any questions.

23 CHAIRMAN KEESE: Not at this time.

24 Thank you.

25 Mr. Fessenden.

1 MR. FESSENDEN: Mr. Chairman,
2 Commissioners, Mr. Boyd, thanks for the
3 opportunity to be here.

4 My name is Dan Fessenden. I manage
5 Government Affairs for Carrier Corporation, which
6 is, again, another company in the HVAC industry.

7 We're glad to be here to again provide
8 some comment and input to the Commission as you
9 make a -- yet another decision on some important
10 energy efficiency standards that apply to our
11 industry.

12 I should start off by saying that
13 notwithstanding the comments that have been
14 provided you by ARI, which Carrier is a member of,
15 we would like to assert a degree of cautious
16 optimism that the Commission's actions, or, if I
17 could say, pending actions relative to EER and
18 TXVs will be good ones. Good ones for our
19 industry in the long term. And we say that not
20 knowing for certain, but Staff at the Commission
21 has been very attentive to input that we've
22 provided, and that's been appreciated.

23 And while I think there are still some
24 issues that -- in Title 24, we're hopeful that can
25 be resolved relative to TXVs. When all is said

1 and done, we believe that the documents that
2 you're looking at today are better than they were
3 when we started off back in November.

4 And with respect to EER, I would only
5 ask that the Commission, as has been noted just
6 recently, that often it's the case that California
7 does tend to provide the -- the momentum to move
8 an industry. Carrier Corporation believes that
9 EER is a better descriptor for our industry, and
10 inasmuch as we don't like to have 50 different
11 standards to build equipment and try to sell into
12 different marketplaces, we would like to ask for
13 your continued help in talking about the values of
14 an EER descriptor on a national basis, as it's
15 applicable.

16 So I leave you with those comments, and
17 just one last one, if I may.

18 We have brought this to your attention
19 before, and I would just remind the Commission, as
20 you take this action today, that while the
21 environmental review of this rule contends that
22 this issue is of negligible concern, the issue
23 that comes to our mind when we build larger
24 equipment is what we have to do to remanufacture
25 equipment. And larger equipment, what I'm talking

1 about is what we actually physically have to do to
2 build units that are higher efficiency.

3 And one of the things that we continue
4 to be concerned about is increased use of
5 refrigerants when you do that. And while our
6 industry is governed by an international as well
7 as federal law regarding refrigerants, there's a
8 move in our industry to a more environmentally
9 friendly use of refrigerants, a newer generation
10 of refrigerants, if you will, that are ozone
11 friendly.

12 We think there are many steps that
13 should be considered and always taken into account
14 when making those decisions. We, as a company, do
15 that, but we think that the -- the government has
16 a role in that, as well. And while it can always
17 be shrugged off -- shrug might not be the right
18 word -- while it can always be dismissed, that any
19 governments or, in this case, the State of
20 California's impact on a global environmental
21 issue might not be of significant enough
22 consequence to move that issue down the field
23 entirely, I think every government needs to be
24 worried about the incremental approach.

25 Specifically, on point. I think this

1 Commission should be aware that as we increase
2 efficiencies and air conditioners, the amount of
3 refrigerants that are being used has increased
4 significantly, 40 percent in some cases, as we
5 would argue. And in doing that, you should be
6 mindful that increasing the use of refrigerants
7 should consider whether it's the best refrigerant.

8 So while this issue is perhaps of
9 smaller consequence on the global scale,
10 California, like every other country that has
11 subscribed to the Montreal protocol, every other
12 country that subscribes to the Montreal protocol
13 has a small piece of environmental responsibility.
14 And I would contend that the State of California
15 should accept a small amount of environmental
16 responsibility and recognize that this is an issue
17 that should be confronted, and I would say
18 confronted not just by the Commission, but by the
19 State of California.

20 Thank you.

21 CHAIRMAN KEESE: Thank you.

22 Any questions here?

23 COMMISSIONER ROSENFELD: Yeah.

24 CHAIRMAN KEESE: Commissioner Rosenfeld.

25 COMMISSIONER ROSENFELD: I'll make a

1 comment. I want to thank both Jim Mullen and Dan
2 Fessenden for having spent some time briefing me
3 on these issues.

4 I think on California taking the lead on
5 ozone friendly refrigerants, I'm right with you.
6 I don't see that they belong in the standards
7 process which we're discussing now. I do believe
8 that the Public Utilities Commission, through the
9 utilities, has control over a lot of public
10 benefits, \$250 million a year. They have
11 traditionally had incentive programs, and I
12 certainly intend to go talk to those folks about
13 adding some small incentives to make people aware
14 that there are differences in refrigerants and
15 that a \$25 or \$50 incentive might -- might bring
16 this issue to people's consciousness.

17 So I thank you for bringing it up. And
18 I hope the rest of the Commissioners will support
19 me in that.

20 EX OFFICIO MEMBER BOYD: Mr. Chairman.

21 CHAIRMAN KEESE: Mr. Boyd.

22 EX OFFICIO MEMBER BOYD: I was going to
23 reserve my comments until after all people had a
24 chance to speak, but Commissioner Rosenfeld has
25 smoked out an issue that he beat me to it, quite

1 frankly. The increased use of refrigerants,
2 environmentally friendly refrigerant issue, the
3 whole issue of ozone depletion, and so on and so
4 forth, is one that -- that is of concern to many
5 of us. I know Commissioner Rosenfeld and I, at
6 least, hold similar views on that, as does the
7 Secretary for the Resources Agency.

8 And we're quite concerned, and I'm very
9 pleased with the comments of representatives of
10 the industry, relative to not a nation State of
11 California concern, a national and international
12 concern for that subject. I'm aware that the
13 Energy Commission per se would -- has a difficult
14 time legally and statutorily addressing this
15 issue, but certainly not philosophically. And I
16 certainly support Commissioner Rosenfeld's
17 comments about going to the PUC, which holds the
18 purse strings, regarding programs that might
19 incent the purchase of -- of new air conditioners,
20 particularly those that might use environmentally
21 friendly refrigerants.

22 So that is a point well made, well
23 taken, and I frankly compliment Carrier
24 Corporation for -- for bringing it to our
25 attention.

1 And while I've got the microphone,
2 although, again, these are comments I would've
3 saved for the end, just on the question of EER and
4 the statement made about California provides the
5 momentum, et cetera, et cetera, for an industry, I
6 couldn't help but agree with that. And I couldn't
7 help but reflect on -- on the many gray hairs in
8 my head reflecting from the many years I spent in
9 the regulatory business in this state. And the
10 fact that this state has had -- has found itself
11 setting the standard for the nation.

12 When you are the world's sixth largest
13 economy, you have the advantage of doing that
14 quite often, and California, the world tolerated
15 the California automobile for a long, long time,
16 and I think you can tolerate a California air
17 conditioner for quite some time, until other
18 states and then the nation in general catches up
19 with the lessons learned in California.

20 Unfortunately, I'm saying this in the
21 middle of a very painful lesson learned in
22 California, but nonetheless what we're trying to
23 do here addresses some of that issue. And so not
24 unlike the technology forcing standards that I
25 lived with at the Air Resources Board for 20

1 years, I've come to learn that the technology
2 forcing standards of the California Energy
3 Commission, and thus of all California regulatory
4 agencies, is to be commended and complimented, and
5 admired, if you're interested in -- in the better
6 good that gets done.

7 So I very much appreciate the points
8 that have been made, and the fact that there's an
9 opportunity here to really do some good, I
10 believe. So thank you.

11 COMMISSIONER PERNELL: Mr. Chairman.

12 CHAIRMAN KEESE: Commissioner Pernell.

13 COMMISSIONER PERNELL: On this issue. I
14 would agree with my colleagues. I, too, am
15 intrigued by this. So if there is research or
16 documentation that you have that -- that comes
17 from the industry, I would appreciate it if you
18 could get it to my office, or to the Commission,
19 so that we can pursue this further.

20 Thank you.

21 CHAIRMAN KEESE: Thank you.

22 Mr. Fernstrom, do you want to -- all
23 right.

24 Mr. Stone.

25 MR. STONE: Nehemiah Stone, with the

1 Heschong Mahone Group, for PG&E.

2 I just want to report that what you're
3 asking for from the Public Goods funds through the
4 PUC already is in place in at least one major
5 program.

6 Since 1999, Savings by Design, which is
7 the non-residential new construction program that
8 the three larger utilities participate on
9 together, has had a requirement in it that to get
10 credit for the energy efficiency improvements, or
11 meeting the energy efficiency target levels within
12 that program for heat pumps, air conditioners, and
13 grocery store refrigeration equipment, that you
14 have to use a non-ozone depleting refrigerant in
15 the equipment. And it references target levels at
16 the federal level that are out -- not in adoption
17 yet, but out there in the future.

18 So the -- the statewide program, Savings
19 by Design, which we facilitated the utilities'
20 forming, already has that element in it, and it
21 could be expanded to retrofit programs, as well.

22 CHAIRMAN KEESE: Thank you.

23 Mr. Fernstrom. You're back on.

24 MR. FERNSTROM: Thank you.

25 Gary Fernstrom, Senior Program Manager

1 for PG&E.

2 I'd just like to say that PG&E is a
3 California based corporation that has been in
4 business here for over a hundred years, serves 12
5 million individuals, cares about California
6 ratepayers, and have studied the performance of
7 air conditioning in California for well over a
8 decade.

9 Regardless of what others have said, the
10 results of our studies have shown that EER is a
11 better indicator of performance in California than
12 SEER because our air conditioning customers
13 typically turn them on at hot temperatures, as
14 David Goldstein pointed out.

15 We've also learned that thermostatic
16 expansion valves are a good measure for California
17 customers, and that's why our energy efficiency
18 programs are operating in a way that provide
19 incentives for these measures.

20 With regard to the issue of how air
21 conditioners are operating at peak load, whether
22 they're cycling or not, that's a very good point
23 in that most air conditioners in California are
24 installed over-sized, and that itself contributes
25 to their energy inefficiency. If they were

1 properly sized, they would all be running flat out
2 at peak load, which is, in fact, you would expect.
3 And therefore, TXVs and EER would be even better
4 measures with regard to efficiency.

5 So we think in the next go-around the
6 Commission ought to look sizing, and that would
7 eliminate the whole issue around whether air
8 conditioners are cycling or running flat out at
9 peak load.

10 Lastly, on the issue of refrigerants.
11 California was, in fact, a leader in alternatives
12 to CFCs with the super efficient refrigerator
13 program that the NRDC and PG&E collaborated on
14 over a decade over. That refrigerator was the
15 first one produced that, in fact, by virtue of the
16 requirements of the sponsors of that program,
17 needed to be a non-CFC configuration. So I think
18 California has taken the lead with regard to non-
19 CFC refrigerants, and has been a leader and should
20 continue to do so in that area.

21 PG&E supports the recommended
22 improvements to the standards. Thank you.

23 CHAIRMAN KEESE: Thank you.

24 Any questions on the air conditioning
25 issue?

1 Well, Mr. Fernstrom, don't go too far,
2 then, because since you got to go last that time,
3 you get to go first on water heaters.

4 (Laughter.)

5 MR. FERNSTROM: In the interest of
6 saving time I'll simply say that we support the
7 recommended improvements to the water heater
8 standards.

9 CHAIRMAN KEESE: The Commission
10 appreciates that testimony.

11 David Goldstein.

12 MR. GOLDSTEIN: Thank you, Mr. Chairman.

13 David Goldstein, at NRDC.

14 We also support the adoption of the
15 water heater standards. I'd point out in
16 particular that, I don't know, I opened up my PG&E
17 bill and gas prices were more than double what
18 they were last year. Saving gas is important in
19 California. It's particularly important because
20 there have been extreme excursions in wholesale
21 prices due to an imbalance of supply and demand,
22 and so even a relatively small improvement in
23 efficiency might just be able to keep rates down a
24 little bit at the margin in tough times, and make
25 a big difference to the state.

1 Why is the CEC standard tougher than the
2 DOE standard? Well, CEC Staff participated
3 extensively in the DOE hearing, and they and we,
4 and other state representatives, simply think DOE
5 goofed. They paid too much attention to a concern
6 about condensation that probably isn't valid
7 anywhere in the country as a reason not to set the
8 standard more stringent, but almost certainly
9 isn't valid in California because of climate
10 conditions and the way flues are constructed in
11 this state. So even if DOE had been right, the
12 Staff analysis is more right for local conditions.

13 Finally, we have an experiential base of
14 doing these efficiency levels in California
15 through Title 24. Title 24 offers trade-offs
16 between energy efficiency measures and the hot
17 water system and the rest of the building. And
18 builders have quickly discovered that the cheapest
19 way to meet Title 24 is to install water heaters
20 with an energy factor of .60, and virtually all
21 homes do that. That was one of the few things
22 that was without dispute throughout the Title 24
23 proceeding, is builders always put in a .60 water
24 heater.

25 Well, if that's the standard issue for

1 new construction, why should it be any different
2 for the replacements when this new construction
3 water heater wears out after nine years, much less
4 for existing construction. We've already shown
5 that this is the most cost effective measure
6 around, that it's widely available, everybody does
7 it for new houses. Let's do it universally.

8 CHAIRMAN KEESE: Thank you. Let me ask
9 you a question. I see we have a letter from the
10 Gas Appliance Manufacturers. We're not preempted
11 on this one by federal law?

12 MR. GOLDSTEIN: We are preempted on this
13 one. We would have to go through the waiver
14 process just as we would on air conditioners. I
15 don't believe that's a big impediment, both
16 because of this administration's attitude toward
17 state regulations and because of the plain wording
18 of the law, which says that you get a waiver if
19 you have unusual and compelling state or local
20 circumstances. And I don't know how you can get
21 much more unusual, certainly not much more
22 compelling than what we're facing right now.

23 CHAIRMAN KEESE: Thank you.

24 Mr. Hunt.

25 MR. HUNT: Marshall Hunt, PG&E.

1 I want to also back up that we do
2 support the standards at PG&E, and right now we
3 are designing a bunch of different programs and
4 one of them will be what we're calling probably a
5 cash-back program, it may have a different name,
6 but we'll be encouraging people to buy water
7 heaters that meet these new standards, and we'll
8 be creating quite a bit of demand, so we
9 definitely need these new standards clearly
10 spelled out, and we'll be implementing
11 immediately. And we hope you'll be seeing this,
12 so that the work you do here has an immediate
13 impact, we hope, in the next few months, if not
14 sooner.

15 Thanks.

16 CHAIRMAN KEESE: Thank you.

17 Mr. Ahmed.

18 MR. AHMED: Thank you, Commissioners.

19 My name is Ahmed, consultant to Southern
20 California Gas Company.

21 Southern California Gas Company has
22 always advocated higher efficiencies and has been
23 a participant historically in the development of
24 the standards, and in the consensus process, along
25 with the other investor owned utilities.

1 In our review of the gas water heater
2 standard, we have a concern. The only concern
3 that we have is that of -- of safety and
4 liability. We are not opposed to raising the
5 standards if the standards are safe and they
6 protect the -- the customer, the consumer.

7 The concern is because of we have -- we
8 had a review of the testimony before the DOE
9 regarding they make the standards for water
10 heaters, and there were a lot of parties, gas
11 industry, manufacturers, that complained or
12 brought to attention the fact that raising the
13 standards beyond a certain level, and at that
14 point with the DOE the discussion was a level of
15 .67. The standard has a -- has a number, .67
16 minus .0019 times the volume, rated volume of the
17 water heater.

18 The concern was that raising it any
19 beyond or above that number would result in
20 condensation, especially for smaller water heaters
21 which tend to have smaller volume, therefore will
22 have to meet a higher standard.

23 So that is our main concern, that if the
24 -- the standard is raised and it impacts smaller
25 water heaters, and the smaller water heaters make

1 up the bulk of the replacement market, and
2 according to the -- the gas industry, as well as
3 the manufacturers, that if you were to raise the
4 recovery efficiency beyond 78 percent, severe
5 condensation could occur and it might require that
6 the venting should be double walled.

7 But in a replacement situation, the
8 homeowners may not be aware of it. The contractor
9 may not be aware of it. And it could have
10 condensation and deterioration of the water heater
11 support and end up having an accident, and it
12 could actually be a liability issue.

13 That is the only concern that we have,
14 and we hope that the Commission will actually look
15 into this. We have not seen any technical
16 documentation from Staff, a paper, some sort of a
17 technical paper that supports this standard from
18 the standpoint of cost effectiveness, as well as
19 safety.

20 Regarding cost -- I'd like to point out
21 that if you assume that raising the -- the water
22 heater efficiency to .685 there is a \$40 cost
23 increase, that's what Staff has used, our concern
24 is that if you have to change the venting the cost
25 will be much higher. And which has not been

1 addressed.

2 CHAIRMAN KEESE: Thank you.

3 Commissioner Rosenfeld.

4 COMMISSIONER ROSENFELD: Mr. Ahmed, I
5 think you have a good point in suggesting that
6 Staff should study this issue in some detail, then
7 issue of technical report and probably in
8 collaboration with the two gas utilities, three
9 gas utilities. Would that make you feel more
10 comfortable?

11 MR. AHMED: Yes.

12 COMMISSIONER ROSENFELD: Good.

13 CHAIRMAN KEESE: Okay. Thank you.

14 COMMISSIONER PERNELL: Mr. Martin had a
15 comment on that.

16 CHAIRMAN KEESE: Well, we're going to --
17 is there any other public comment?

18 EX OFFICIO MEMBER BOYD: Mr. Martin has
19 a comment on that.

20 CHAIRMAN KEESE: Well, let me -- wait a
21 second. Is there any other public comment at this
22 time?

23 Okay. We're going to give Staff a
24 chance to close here, reasonably briefly, and --
25 and answer any of the -- any of what you heard.

1 MR. MARTIN: I think on the air
2 conditioning comments that they -- they've been
3 pretty well taken care of. I would agree with the
4 gentleman from Carrier that the seasonal energy
5 efficiency rating is not only not very
6 appropriate, but the way it is currently conducted
7 is it doesn't do what it's intended to do.

8 We have committed ourselves to working
9 with Carrier to get this improved. DOE is working
10 on revising the test method. In fact, they have a
11 workshop today going on right now, which it wasn't
12 easy -- it was easy enough to choose where I
13 wanted to be today.

14 (Laughter.)

15 MR. MARTIN: But the SEER is not an
16 inappropriate -- it doesn't do what it's supposed
17 to do, and I think we can improve upon it.

18 I -- as far as this recent comment,
19 Southern California Gas people and I were on a
20 phone call together, and we agreed that there is a
21 level where the recovery efficiency gets higher,
22 where there is more condensation. The reason for
23 this is that if what goes up the flue is hot
24 enough, you don't get any condensation. If you
25 have a very high efficiency, recovery efficiency,

1 then you tend to get more condensation.

2 The discussion they had in Washington
3 was based on the effect that this has if you vent
4 your water heater into an existing masonry
5 chimney, and I've never seen that done in
6 California. I don't presume that there might be
7 some somewhere. It's a most unusual kind of a
8 situation.

9 However, we did provide to DOE and also
10 to Southern California Gas Company a list of the
11 water heaters that comply with the proposed
12 regulations that we have, with the recovery
13 efficiency, and there are many water heaters that
14 have a recovery efficiency that's low enough not
15 to be above the 78 percent level that we just
16 heard about. So it doesn't have to be a problem.

17 We also did a cost effectiveness level
18 of calculation as to what additional requirements
19 they would need to go this extra step, and we came
20 to a two-year payback on the assumption that you
21 might need this double-walled venting. But for
22 the time being, we intend to set -- we assume that
23 was needed in ten percent of the applications,
24 which I believe is a hundred percent too high.

25 Then we've got a payback in two years on

1 this additional spin. So I -- I've very much
2 gained working with the utilities. But we are
3 already doing it. We have both had
4 representatives on the C21 committee who are
5 trying to get some closure on the finding on the
6 consensus that the water -- the rule should be for
7 this additional venting. And we are working on
8 it. But in this particular case, we don't have a
9 problem.

10 CHAIRMAN KEESE: Thank you.

11 Ms. Hall, do you have any final closing?

12 MS. HALL: No concluding remarks, other
13 than the Staff recommendation for approval.

14 CHAIRMAN KEESE: Commissioner Pernell.

15 COMMISSIONER PERNELL: Mr. Chairman,
16 just a brief comment, and then I'd like to make a
17 motion.

18 We have heard, Commissioner Rosenfeld
19 and I, and certainly Ms. Hall and Mr. Martin and
20 other Staff, a lot of spirited debate over
21 appliance standards. I think you've heard some of
22 that here today. But at the end of the day, we
23 think that the action taken here is a benefit to
24 the consumer, a benefit to California, and I would
25 urge that we go forward with it, keeping in mind

1 that we're only doing air conditioners and hot
2 water heaters, and not the -- the list of proposed
3 appliances that we had originally.

4 So with that, Mr. Chairman, I would move
5 the adoption of the proposed standard pursuant to
6 the draft order prepared by our Chief Counsel.

7 CHAIRMAN KEESE: Motion, Commissioner
8 Pernell.

9 COMMISSIONER ROSENFELD: Second.

10 CHAIRMAN KEESE: Second, Commissioner
11 Rosenfeld.

12 All in favor?

13 (Ayes.)

14 CHAIRMAN KEESE: Opposed?

15 Adopted, five to nothing.

16 Thank you everybody for your
17 participation. I thought it was a worthwhile
18 discussion.

19 COMMISSIONER PERNELL: Thank you. Good
20 job, Ms. Hall and Mr. Martin.

21 CHAIRMAN KEESE: Before my Commissioners
22 escape, we're going to have an Executive Session
23 after we're done here.

24 Minutes, we have no minutes in front of
25 us.

1 Commission Committee and Oversight.

2 COMMISSIONER PERNELL: Mr. Chairman,
3 just one brief announcement, and that is the
4 emergency building standards that the Commission
5 adopted was also adopted January 31st by the
6 Building Standards Commission, which it's a agency
7 that adopts and oversees the standards that we
8 adopt on the building side.

9 So I wanted to just inform the
10 Commission that our building standards are adopted
11 unanimously by the Building Standards Commission.

12 CHAIRMAN KEESE: Thank you.

13 Chief Counsel's Report.

14 COMMISSIONER LAURIE: Mr. Chairman,
15 before we get to that. I think the Commission is
16 aware of the fact that San Onofre had an unusual
17 event the other day, whereby one of its turbines
18 that had been under maintenance and was being
19 tested to come back online had a small fire, the
20 result of which -- folks, if you could move it
21 outside, please? Thank you very much.

22 The result of which will require a very
23 high level investigation by the NRC. That unit
24 was scheduled -- this is Unit Number 3, is
25 scheduled to be back online in two weeks or so.

1 It was going to be back online early. As a result
2 of the incident, it will be back online late.

3 That's my latest understanding.

4 CHAIRMAN KEESE: Thank you.

5 Chief Counsel's Report.

6 CHIEF COUNSEL CHAMBERLAIN: Still no.

7 CHAIRMAN KEESE: Still nothing.

8 Executive Director's Report.

9 EXECUTIVE DIRECTOR LARSON: I have --
10 Mr. Chairman, I have one note from Tim Schmelzer.
11 It says that we received a request, I assume
12 today, from the Governor's Office asking for
13 preliminary opinions on all of the 70 bills that
14 are now in the Special Session. Therefore, he's
15 asking for a special meeting of the Legislative
16 Committee at 4:00 p.m. today.

17 CHAIRMAN KEESE: And Commissioner
18 Pernell and I will be only too pleased to
19 accommodate him.

20 COMMISSIONER LAURIE: If you can provide
21 the information to the other Commissioners'
22 offices as well, so we can provide input?

23 CHAIRMAN KEESE: We did -- it should be
24 done -- we did get through probably about 40 of
25 them with the advisors there earlier this week.

1 So it's not -- it shouldn't -- it should not be a
2 70 --

3 COMMISSIONER MOORE: How many of them
4 are still the same bill that you looked at
5 earlier?

6 CHAIRMAN KEESE: -- it should not be a
7 70 bill workload, but --

8 COMMISSIONER PERNELL: Just on that
9 note, Mr. Chairman. Mr. Larson, if we could get
10 those bills to the other Commissioners. I
11 understand our meeting is at 4:00. We want to
12 give them time to review it and give us some
13 comments before we go into the Committee meeting.
14 So I would just ask that as soon as possible, get
15 them to the various offices for comments.

16 CHAIRMAN KEESE: Thank you.

17 Public Adviser's report.

18 Public Comment. Okay.

19 MS. HEBERT: My name is Elaine Hebert,
20 and I wear several hats also. And I'm here before
21 you today as the President of the Northern
22 California Solar Energy Association. And we have
23 some events happening locally that have given us
24 some high visibility.

25 Channel 31 got hold of me this week and

1 asked me to come over and give commentary on a
2 house that has solar on it, but in addition to
3 that this house was very, very energy efficient.
4 And it turns out that the couple that lives there
5 doesn't even have air conditioning. This house is
6 located in Sacramento. R-22 in the walls, R-39 in
7 the ceilings, a number of other features. These
8 people don't -- don't need air conditioning in the
9 Sacramento climate.

10 I was very intrigued with that because
11 it has incredible implications for peak demand, if
12 -- if houses could be built like this.

13 So my other hat is I work in the Energy
14 Efficiency Division here at the Energy Commission,
15 and I'm on the team that supports Title 24. So
16 I'm intrigued with this concept, and just wanted
17 to bring it to your attention that dealing with
18 peak demand, we may have another alternative. And
19 I don't know that it's appropriate to go through
20 the building standards with this kind of concept,
21 but just to make you aware that it's -- that it's
22 possible to be comfortable in a home, in this
23 climate, without air conditioning in the summer.
24 And, boy, what -- what a concept.

25 So that's it. Thank you.

1 CHAIRMAN KEESE: Thank you for the
2 commercial pitch.

3 COMMISSIONER PERNELL: Mr. Chairman, on
4 that issue, I would ask that on the Efficiency
5 Committee, perhaps you can brief the Committee and
6 the Committee will then go forward with something
7 to the full Commission, or at least a white paper
8 on -- on the issue of home building without air
9 conditioning.

10 So I don't want -- I thank you for your
11 comments, but I don't want to just leave it there,
12 so maybe a white paper to the Committee, and then
13 we can go forward from there.

14 MS. HEBERT: Or a visit to the home in
15 the summer.

16 COMMISSIONER PERNELL: I'm always
17 willing to get out of this building.

18 MR. RAYMER: Thank you, Mr. Chairman and
19 Commissioners. Bob Raymer, representing the
20 California Building Industry Association on
21 legislative matters.

22 Earlier during the Title 24 proceeding,
23 it was mentioned on numerous occasions that both
24 CBIA and I was hearing from the Commissioners and
25 other interested parties that there was a desire

1 to see some Commission investigation of existing
2 buildings, be it commercial or residential, and
3 over the course of time, perhaps see about
4 enhancing energy efficiency to those, whether it
5 be through incentives, tax credits, banking
6 programs, regulations, even.

7 I'm please to announce that we do have a
8 piece of legislation that's now in the hopper.
9 Earlier this week we were notified that
10 Assemblyman Longville, Democrat, is seeking
11 authorship of this measure. And in addition, we
12 wanted to try and get bipartisan support for it.
13 And about an hour ago we heard from the head of
14 the Senate Republican party, Senator Brulte. He,
15 too, wants to author a similar measure on the
16 senate side.

17 So it looks like this will be a
18 bipartisan measure. We're going to pass off the
19 finished bill. I understand that Staff is still
20 drafting some proposed amendments to the bill on
21 some other issues. At that point, when we -- once
22 we have that language, we'll submit it to you and
23 -- to go through your process.

24 But right now, it's full speed ahead.

25 CHAIRMAN KEESE: Thank you. And since

1 agency is here and has heard that, I'm sure agency
2 will turn it around in 24 hours and will be ready
3 to go.

4 Any other items to come before us?

5 PUBLIC ADVISER MENDONCA: We were
6 checking out your --

7 CHAIRMAN KEESE: Name, please?

8 PUBLIC ADVISER MENDONCA: -- broadcast
9 on the Webcast -- this is Roberta Mendonca, the
10 Public Adviser. And I heard you call for the
11 Public Adviser's report, and I think my timing is
12 correct.

13 I wanted to introduce the newest member
14 of the Public Adviser's Staff, Maria Krapceovich --
15 oh, help me out.

16 MS. KRAPCEVICH: It's Maria Krapceovich.

17 PUBLIC ADVISER MENDONCA: We'll all
18 learn. I'm still in the learning curve.

19 (Laughter.)

20 PUBLIC ADVISER MENDONCA: And she's hit
21 the ground running. She's already started in on
22 the Rio Linda project, and she'll be on the site
23 visit with me tomorrow down in Pittsburg.

24 So please all welcome Maria.

25 CHAIRMAN KEESE: Thank you.

1 Welcome, Maria.

2 All right. This meeting is adjourned.

3 We'll -- everybody okay that we have Executive
4 Session in my office, right now? Okay.

5 (Thereupon the Business Meeting
6 was concluded at 12:30 p.m.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, to hereby certify that I am a disinterested person herein' that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Meeting, nor in any way interested in the outcome of said Meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of February, 2001.

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